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Oct 9. 1878

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~222~~ 23

MRS. BESSIE ELGEE GAUSSEN, WIFE OF E. J. GAUSSEN, EXECUTRIX OF JOHN KINGSBURY ELGEE, DECEASED—E. T. PARKER, PUBLIC ADMINISTRATOR, SUBSTITUTED—PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 15, 1875.

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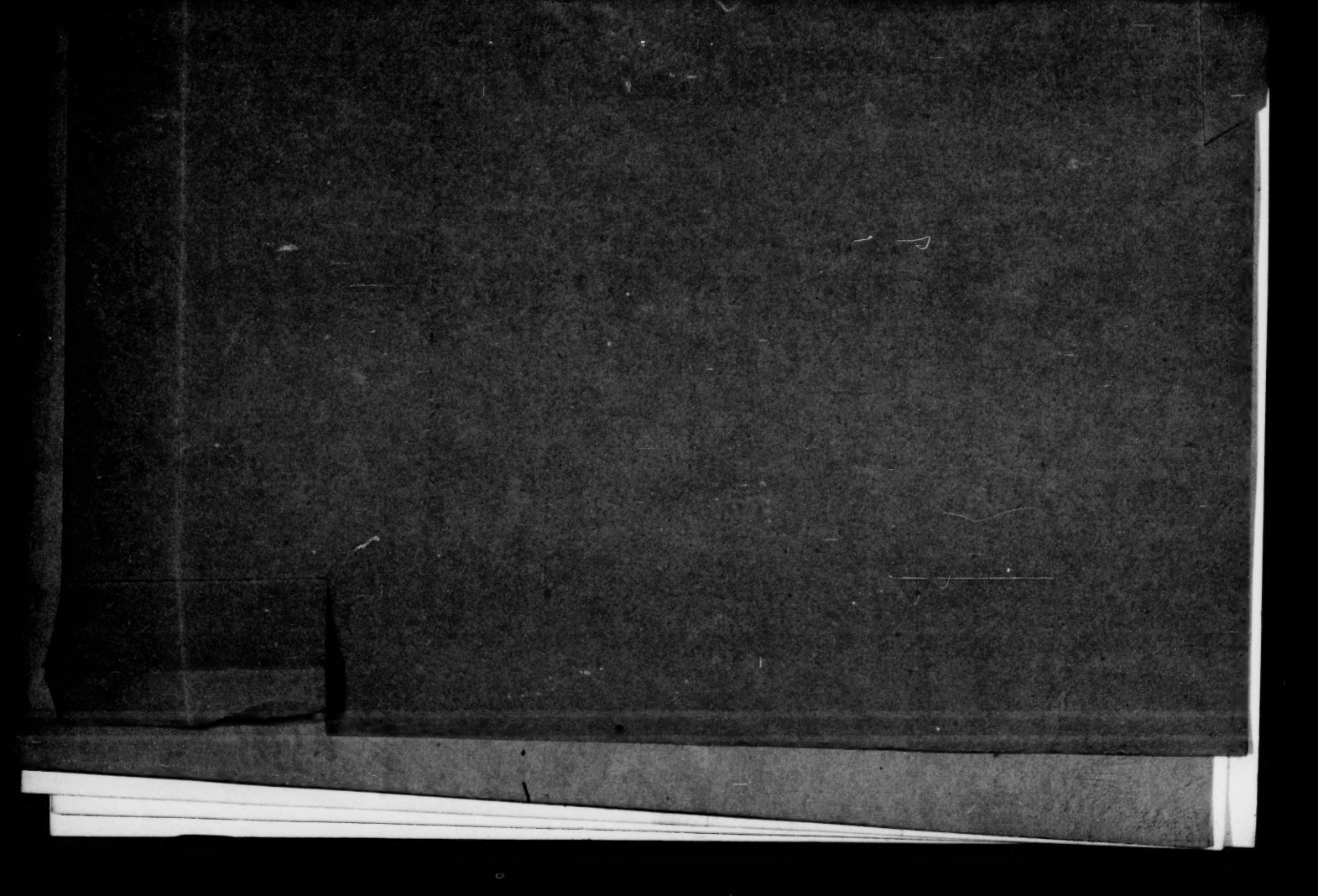

SUPREME COURT OF THE UNITED STATES.

No. 222.

MRS. BESSIE ELGEE GAUSSEN, WIFE OF E. J. GAUSSEN, EXECUTRIX OF JOHN KINGSBURY ELGEE, DECEASED—E. T. PARKER, PUBLIC ADMINISTRATOR SUBSTITUTED—PLAINTIFFS IN ERROR,

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1 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

THE UNITED STATES
vs.
M'R'S B. E. GAUSSEN, EXECUTRIX OF WILL OF Jno. K. Elgee. } No. 5922.

Petition.—Filed June 26th, 1869.

To the hon. the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

The petition of the United States with respect shows that M'r's Bessie Elgee, of Louisiana, widow of the late Scott, and now wife of Edmond J. Gaussen, is executrix, under the will of her father, John Kingsbury Elgee, deceased, late of the city of New Orleans, duly recognized and appointed under the decree of the second district court of New Orleans, L'a, and that she is represented in her said capacity of executrix by her duly-appointed agent and attorney-in-fact, Sam-
2 uel Delgado, of New Orleans, L'a, as per acts passed before Theo. Starke, notary public, of said city, viz, power of attorney by her to Carl Kohn, on the 11th January, 1866; ratification of the same by her and her husband, E. J. Gaussen, 29th May, 1867; substitution of Samuel Delgado by Carl Kohn on 9th May, 1867; and that the said M'r's Bessie Elgee Gaussen, in her said representative capacity of executrix of the last will and testament of the said Jno. K. Elgee, as aforesaid, is justly indebted to petitioners in the sum of forty-one thousand three hundred and seventy-six dollars and sixty-four cents, and interest as hereinafter claimed, for this—

That heretofore, to wit, on or about the 6th day of July, 1844, Thomas Barrett, of New Orleans, L'a, now deceased, was duly appointed by the President of the United States to the office of collector of the customs for the district of New Orleans, in the State of Louisiana, and on the said 6th July, 1844, the said Barrett did make, sign, and deliver to petitioners a bond, as required by law, in favor of petitioners, in the penal sum of one hundred and twenty thousand dollars, conditioned for the faithful performance by him of all the duties of the said office, as
3 will more fully appear by the duly certified copy of said bond hereto annexed as part of this petition.

And the said Jno. K. Elgee and Francois Delery, Silvian Peyroux, Lucien Herrmann, and Bernard Cantrelly did sign the said bond, and did therein and thereby bind themselves, their heirs, executors, administrators, &c., jointly and severally, to the amount of the penalty of the said bond, as sureties for the faithful performance by the said Barrett of all the duties of his said office.

Petitioners aver that the said Thomas Barrett altogether failed and neglected faithfully to perform all the duties of the said office according to law, and particularly in this, that he failed and neglected faithfully to account for and pay over to petitioners the money by him received for petitioners in his official capacity aforesaid.

Petitioners aver that, on the 12th October, 1845, the accounts of said Barrett, as collector as aforesaid, were adjusted by the proper officers

of the Treasury of the United States, and a balance of forty-one thousand three hundred and seventy-six $\frac{64}{100}$ dollars ($41,376.64) was
4 found to be due and owing by said Barrett to petitioners, all of which will more fuliy appear by the certified statement of said accounts annexed as part hereof.

The said balance is still unpaid, although it has been duly and amicably demanded.

The premises considered, petitioners pray that the said M'r's Bessie Elgee Gaussen, executrix of the will of John K. Elgee, through her attorney-in-fact, Sam'l Delgado, may be cited to answer this petition, and, after due proceedings had, that petitioners may have and recover against the said M'r's Bessie Elgee Gaussen, executrix of the will of John K. Elgee, deceased, for the said sum of forty-one thousand three hundred and seventy-six dollars and sixty-four cents, with interest thereon, at the rate of six per cent. per annum, from 12th of October, A. D. 1845, till paid, and costs of suit.

And they pray for general relief.

(Signed) P. H. MORGAN,
U. S. Att'y.

Copy of official bond as collector (Barrett.)—Filed June 26th, 1869.

UNITED STATES OF AMERICA:

TREASURY DEPARTMENT, *October 9th*, 1866.

Pursuant to the act of Congress of 22d February, 1849, I hereby certify that the annexed is a true copy of the bond of Thomas Bar-
5 rett, collector of the customs for the district of New Orleans, in the State of Louisiana, on file in this Department.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

[SEAL.] (Signed) HUGH McCULLOCH,
Secretary of the Treasury.

Bond.

Know all men by these presents, that we, Thomas Barrett, as principal, and Francois Delery, Jno. K. Elgee, Silvain Peyroux, Lucien Hermann, and Michel Bernard Cautrelly, as sureties, are held and firmly bound unto the United States of America in the full and just sum of one hundred and twenty thousand dollars, money of the United States; to which payment, well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this sixth day of July, in the year one thousand eight hundred and forty-four.

The condition of the foregoing obligation is such, that, whereas the President of the United States hath, pursuant to law, appointed
6 the said Thomas Barrett to the office of collector of the customs for the district of New Orleans, in the State of Louisiana:

Now, therefore, if the said Thomas Barrett has truly and faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge, all the duties of the said office, according to law,

then the above obligation to be void and of none effect; otherwise it shall abide and remain in full force and virtue.

Sealed, signed, and delivered in the presence of:

(Signed) THO. BARRETT. [L. S.]
ISAAC STEWART.
D'ANNIVILLE GRIFFON.

(Signed) FRANCOIS DELERY. [L. S.]
ISAAC STEWART.
D'ANNIVILLE GRIFFON.

(Signed) JNO. K. ELGEE. [L. S.]
ISAAC STEWART.
D'ANNIVILLE GRIFFON.

(Signed) SILVAIN PEYROUX. [L. S.]
ISAAC STEWART.
D'ANNIVILLE GRIFFON.

(Signed) LUCIEN HERMANN. [L. S.]
ISAAC STEWART.
D'ANNIVILLE GRIFFON.

(Signed) MICHEL BERNARD CAUTRELLY. [L. S.]
ISAAC STEWART.
D'ANNIVILLE GRIFFON.

I approve the above-named sureties of Thomas Barrett, as ample and sufficient.

New Orleans, July 6th, 1844.

(Signed) BALIE PEYTON,
U. S. Att'y E. D. of L'a.

7 NOTE.—The names to be written and signed in full; seals to be affixed with wax or wafer; signatures to be witnessed by two witnesses, and the bond to be dated on the day it is executed.

The sufficiency of the sureties to be certified by the United States district judge or attorney.

Oath.

I, Thomas Barrett, having been appointed to the office of collector of the customs for the district of New Orleans, in the State of Louisiana, do solemnly, sincerely, and truly swear that I will diligently and faithfully execute the duties of the said office of collector of the customs, and will use the best of my endeavors to prevent and detect frauds in relation to the duties imposed by the laws of the United States.

I further swear that I will support the Constitution of the United States.

(Signed) THO. BARRETT,
Collector.

Sworn to and subscribed this 6th day of July, 1844, before me.

Witness my hand and seal.

(Signed) THO. H. McCABB, [L. S.]
United States District Judge for Louisiana.

8 *Certified statement of accounts of the late Tho's Barrett, collector of customs, New Orleans, Louisiana, marked "X."—Filed with petition, June 26th, 1869.*

TREASURY DEPARTMENT, REGISTER'S OFFICE,
30th October, 1866.

Pursuant to the act of March 3rd, 1797, entitled "An act to provide

more effectually for the settlement of accounts between the United States and receivers of public moneys," I, S. B. Colby, Register of the Treasury Department, do hereby certify that the annexed copies of the reports of the First Auditor of the Treasury, No. 5688, 5700, 5856, 5870, 9391, 6423, 9241, and 15817, as admitted and certified by the Comptroller and Commissioner of Customs upon the accounts of Thomas Barrett, late collector of the customs for the district of New Orleans, Louisiana, under his bond dated 6th July, 1844, and of the statements *and statements* of differences thereon, are a transcript from the books and proceedings of the Treasury, and that the copies of the accounts-current of said collector, and the other papers attached thereto, are true copies of the originals on file in this office.

(Signed) S. B. COLBY, *Register.*

9 Be it remembered that S. B. Colby, esq., who certified the annexed transcript, is now, and was at the time of doing so, Register of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof I, Hugh McCulloch, Secretary of the Treasury of the United States, have hereunto subscribed my name and caused to be affixed the seal of this Department, at the city of Washington, this thirtieth day of October, in the year of our Lord 1866.

[SEAL.] (Signed) H. McCULLOCH,
Secretary of the Treasury.

No. 5688.

TREASURY DEPARTMENT, FIRST AUDITOR'S OFFICE,
June 20th, 1845.

I have examined and adjusted the accounts of Thomas Barrett, collector of the customs for the district of New Orleans, State of Louisiana, under his bond dated July 6th, 1844, commencing on the twenty-fifth day of July and ending on the 30th day of September, 1844, and find that he is chargeable with the following sums, viz:

To duties on merchandise to September 30, 1844	168,645 76	
" duties on railroad iron imported in 1836, but the duties not credited by the collector at that time	2,502 24	
		$171,148 00
10 To duties on tonnage to September 30th, 1844		171 75
" light-money collected		174 39
To marine-hospital money collected to September 30th, 1844	549 55	
Deduct commissions thereon, @ one per cent	5 50	
		544 05
To interest received on goods in store to September 30th, 1844	85 30	
" interest received on bonds for railroad iron	662 44	
		747 04
" amount received for fines, penalties, forfeitures, on account of Thomas Gibbs Morgan, late collector, collected and retained by him, and placed to the credit of the United States in account now stated, and for which said Morgan will receive credit		16 21
	Dollars	172,802 12

I also find that he is entitled to the following credit, viz:

By payments to inspectors, &c., to September 30th, 1844	18,844 81
" contingent expenses paid to September 30th, 1844	783 46
" disbursements for the revenue-cutter Woodbury to September 30th, 1844	3,956 97
" disbursements for the revenue-cutter Vigilant to September 30th, 1844	48 00.

" disbursements for the revenue-boats to September 30th, 1844.			840 00
" disbursements in relation to appraisements to September 30th 1844			1 177 62
11 By balance of public store-account to September 30th, 1844			716 25
" debentures paid on merchandise exported to September 30th, 1844			5 994 45
" fines, etc., costs of suits, to September 30th, 1844			542 19
" duties on merchandise refunded to correct errors to September 30th, 1844			672 15
" duties on tonnage refunded to correct errors			401 33
" amounts paid for extra clerk-hire in the office of the naval officer			368 00
" amount paid George Royster, collector of Teche, per order of the Comptroller of the Treasury, dated July 23d, 1844, and with which said Royster has been debited, per report No. 5387			200 00
" amount paid William H. Arnold, collector of Pearl River, per order of the Comptroller of the Treasury, dated 7th August, 1844, and with which said Arnold has been debited, per report No. 5324			75 24
" three months' salary to the naval officer to September 30th, 1844	62 50		
" three months' salary to the surveyor of New Orleans to September 30th, 1844	62 50		
" three months' salary to the surveyor of Bayou S't John to September 30th, 1844	62 50		
" three months' salary to the surveyor of Port Ponchartrain to September 30th, 1844	62 50		
" three months' salary to the surveyor of Madisonville to September 30th, 1844	62 50		
By three months and 17 days' salary to the surveyor of 12 Lafayette from 14th June to 30th September, 1844, @ $250 per annum	74 17		
			386 67
" amount of warrant No. 3152, in favor of the Treasurer, dated September 30th, 1844			83,164 68
" amount commissions on dollars 127,816.22, at one per cent.			1,278 16
And that the balance due to the United States on the 1st day of Oct., 1844, am't'd to			43,652 16
		Dollars	172,802 12

As appears from the statement and accounts herewith transmitted for the decision of the Comptroller of the Treasury thereon.

(Signed) W'M COLLINS,
First Auditor.

To JAMES W. MCCULLOH. Esq.,
First Comptroller of the Treasury.

Auditor's balance is	43,652 16
Add this sum, amount of difference, to the debit of the collector, as per corrected statement	10 40
Balance due the United States	$43,662 56

COMPTROLLER'S OFFICE.

Admitted and certified to the above as corrected 7th day of August, 1845.

(Signed) J. W. MCCULLOCH,
Comptroller.

R. H. GILLETT, Esq.,
Register of the Treasury.

Thomas Barrett, under his bond dated July 6th, 1844, in account with the United States, D'r.

13 D'r.

To duties on merchandise to September 30th, 1844	$168,645 76		
" duties on railroad iron imported in 1836, but the duties not credited by the collector at that time	2,502 24		
			171,148 00
" duties on tonnage to September 30th, 1844			171 75
" light-money collected to " " "			174 37
" marine hospital money collected	549 55		
Deduct commission thereon, @ one per cent	5 50		
			544 05
To interest received on goods in store to September 30th, 1844	85 30		
" interest received on bonds for duties on railroad iron	662 44		
			747 74
" amount received for fines, penalties, and forfeitures on account of Thomas Gibbes Morgan, late collector, collected and retained by him and placed to the credit of the United States in account now stated, and for which said Morgan will receive credit			16 21
		Dollars	172,802 21

C'r.

By payments to inspectors, &c., to September 30th, 1844			18,844 81
" contingent expenses paid " " " "			783 46
" disbursements for the revenue-cutter Woodbury to September 30th, 1844			3,956 97
" disbursements for the revenue-cutter Vigilant to September 30th, 1844			48 00
" disbursements for the revenue boats to September 30th, 1844			840 00
" disbursements in relation to appraisements to September 30th, 1844			1,177 62
14 By balance of public-store account to September 30th, 1844			716 25
" debentures paid on merchandise exported to September 30th, 1844			15,994 43
" fines, etc., costs of suits, to September 30th, 1844			542 19
" duties on merchandise refunded to correct errors to September 30th, 1844			672 15
" duties on tonnage refunded to correct errors to September 30th, 1844			101 33
" amount paid for extra clerk-hire in office of the naval officer			368 00
" amount paid George Royster, collector of Techè, per order of the Comptroller of the Treasury, dated July 25th, 1854, and with which said Royster has been debited, per report No. 5387			200 00
" amount paid Willis H. Arnold, collector of Pearl River, per order of the Comptroller of the Treasury, dated 7th August, 1844, and with which said Arnold has been debited, per report No. 5324			75 24
" three months' salary to the naval officer to September 30th, 1844	62 50		
" three months' salary to the surveyor of New Orleans to September 30th, 1844	62 50		
" three months' salary to the surveyor of Bayou St John to September 30th, 1844	62 50		
" three months' salary to the surveyor of Port Ponchartrain to September 30th, 1844	62 50		
" three months' salary to the surveyor of Madisonville to September 30th, 1844	62 50		
" three months and 17 days' salary of La Fayette,			
15 from 14th June to 30th September, 1844, @ $250 per annum	†63 87		†376 37
	*64 17		*386 67

* Erased. † Interlined in red.

By amount of warrant No. 3152, in favor of the Treasurer, dated September 30th, 1844		83,164 68
commissions on dollars †127,805.82 (*127,816.22) @ one per cent		† 1,278 06 * 1,278 16
Balance due the United States		† 43,662 56 * 43,652 16
		Dollars 172,802 12

TREASURY DEPARTMENT,
1ST AUDITOR'S OFFICE, *June 19th*, 1845.

Examined and stated by—
(Signed) J. COLEGATE.

COMPTROLLER'S OFFICE, *July 21st*, 1845.

(Signed) J. BARTRAM WORTH.
W. A. W.

The balance due the United States, per his account ending September 30th, 1844			39,507 50
Add amount overcharged for payments to inspectors, &c., viz:			
Overpaid N. C. Snethen for making other articles than spirits, cordials, wines, &c., (will be all'd on next q'r ac.) (red)	$653 70		
Overpaid S. Boyer, weigher, his fees for weigher, am't'g to $440.61, charged $951.62	$511 01		
		1,164 71	
Add amount erroneously charged to contingent expenses:			
Amount paid J. Royalls, bell-keeper of new marine hospital	$75 00		
Amount paid New Orleans Republican, advertising proposals for ditto	12 50		
16 Amount paid J. H. Dakins, architect, bill of drawings for ditto	75 00		
Am't paid Grahams & Williams' bill, printing specifications of builder's work	40 00		
Am't paid N. Orleans Republican, advertising postponement of proposals	11 00		
		213 50	
These bills are chargeable in account for building new marine hospital, (†which is now being stated in the auditor's office,) (red.)			
Add amount paid, two bills, N. Orleans Republican, advertising unclaimed goods; must be paid out of proceeds of sales { No. 7	700 00		
" 11	580 00		
		1,280 00	
Add amount paid D. W. Noble's bill, subscription to Daily N. O. Herald	5 00		
" amount paid J. Beardue's bill, subscription to N. O. Cornell, Bulletin	12 00		
		17 00	
(†Payable out of officials' emol'ts,) (red.)			
Add amount paid Whiting & Shummerhorn's bill, carriage-hire, chargeable to light-house account		7 50	
Add amount charged for payment to G. W. Lewis, as inspector at Na'chitoches; a bill receipted by Lewis himself, accompanied with the usual affidavit, is required		822 00	
Add amount paid R. Condon's bill, keeping a horse for the captain of the night-watch, disallowed		15 00	
Add amount of Balie Payton's (district att'y) bill of fees, No. 5	$459 00		
17 And his bill of fees No. 17, judge's certificate of probable cause, wanted	255 00		
		714 00	
Add amount overpaid D. Clark, surveyor of Lafayette, from 29 (* appointed 14) June, 1844, (date of oath,) to 30th September, 1844, is 3 months & (* 17) 2 days, @ $250 per an		† 170 13 * 159 83	

* Erased. † Interlined in red.

Add amount overcharged for disbursements for revenue-cutter Woodbury, viz:			
am't paid Jos. Dyer's bill for meat & vegetables, &c., disallowed	$26 28		
am't paid Hitchcocks & Bro's bill for beef, bread, groceries, &c., disall'd	104 71		
am't paid P. Gernon, bill for arresting deserters, disallowed	50 00		
am't paid J. D. Usher, 3rd lieutenant, for month of September, and also entered in pay-roll for September and charged in ac. for 4th q'r, 1844	65 63		
am't charged, per order of Capt. Foster, in favor of Noel Barrett, not receipted	20 00		
		266 62	
Amount carried forward		$4,670 46	$39,507 58
Amount brought forward		4,670 46	39,507 58
Add amount charged for payment to deputy collector of Natchitoches, payable (* out of official emoluments) revenue, as per order of Secretary 10th Sept., 1844, & and will be allowed in next ac		630 00	
Add amount overcharged to public-store account, viz:			
18 Add amount overpaid W. H. Wilder, storekeeper, from 25th July to 30th September, 1844, (authority wanted for increase of pay).	$74 23		
am't of extra pay to J. E. Quere, late store-keeper, disallowed	113 66		
am't of extra pay to E. Wiltz, deputy store-keeper, disallowed	93 00		
Add am't overpaid E. Wiltz, deputy store-keeper, for 3d q'r, 1844	92 00		
" subscription to Louisville Courier, disallowed	12 00		
		384 89	
" amount charged for treasury note and interest, (will be brought to his credit in the next statement of his account)		565 71	
" commissions overcharged in this account now stated		†31 28 *31 19	†6,282 34 *6,271 94
			*45,779 32 †45,789 92
Deduct amount credited for monies received on acc't of G. Dorsey, late collector, (must be settled between them)		51 08	
Deduct amount erroneously credited in account, now stated for deposits to secure duties		2,076 28	
			2,127 36
		Dollars	†43,662 56 *43,652 16

No. 5700.] TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE,
3rd July, 1845.

I have examined and adjusted the accounts of Thomas Barrett, collector of the customs for the district of New Orleans, in the State of Louisiana, under his bond dated July
19 6th, 1844, commencing on the first day of October and ending on the thirty-fir st day of December, 1844, and find that he is chargeable with the following sums, viz:

To balance of his account ending September 30th, 1844, for report No. 5688			43,652 16
" duties on merchandise to December 31st, 1844			590,724 00
" duties on tonnage to December 31st, 1844			2,757 27
" light-money collected to " " "			1,990 81
" marine-hospital money collected		2,429 60	
Deduct commissions thereon, at one per cent		24 30	
			2,405 39

* Erased. † Interlined in red.

To interest received to December 31st, 1844			102 30
" fines, penalties, & forfeitures to December 31st, 1844			3 92
		Dollars	641,635 85

I also find that he is entitled to the following credits, viz:

By payments to inspectors, &c., to December 31st, 1844			26,510 92
" contingent expenses paid to December 31st, 1844			1,187 96
" disbursements for the revenue-cutter Woodville to December 31st, 1844			4,230 62
" disbursements for the revenue-cutter Vigilant to December 31st, 1844			503 20
" disbursements for the revenue boats to December 31st, 1844			1,393 34
" disbursements in relation to appraisements to December 31st, 1844			1,470 58
" amount of public-store account to December 31st, 1844			635 00
" amount debentures paid on merchandise exported to December 31st, 1844			31,446 33
" duties on merchandise refunded to correct errors to December 31st, 1844			7,662 78
20 By am't paid extra clerk-hire in office of naval officer to December 31st, 1844			368 00
" am't paid Jesse H. Willis, late collector at S't Marks, per order of the Comptroller of the Treasury, dated Oct. 7th, 1844, and which said Willis has been debited for, report No. 5225			9 41
" am't paid Willis H Arnold, collector of Pearl River, per order of the Comptroller of the Treasury dated 24th October, and with which said Arnold has been debited, per report No. 5490			240 00
" three months' salary to the naval officer, to the 31st December, 1844	62 50		
" three months' salary to the surveyor of New Orleans, to 31st December, 1844	62 50		
" three months' salary to surveyor of Bayou S't John, to 31st December, 1844	62 50		
" three months' salary to the surveyor of Port Ponchartrain, to 31st December, 1844	62 50		
" three months' salary to the surveyor of Madisonville, to 31st December, 1844	62 50		
			312 50
" amount of warrant No. 10, in favor of the Treasurer, dated Nov. 22d, 1844	565 71		
" amount of warrant No. 3288, in favor of the Treasurer, dated Dec. 31st, 1844	369,000 00		
			369,565 71
" commissions on 439,866.85 dollars, @ one per cent			4,398 67
And that the balance due to the United States on the first day of January, 1845, amounted to			191,700 83
		Dollars	641,635 85

21 As appears from the statements and accounts herewith submitted for the decision of the Comptroller of the Treasury thereon.

(Signed) JNO. UNDERWOOD,
Acting First Auditor.

To JAMES W. MCCULLOH, Esq.,
First Comptroller of the Treasury.

Auditor's balance brought down		$191,700 83
Deduct this sum, being the amount of differences to the credit of the collector, as per corrected statement herewith		2,055 69
	Dollars	189,645 69

TREASURY DEPARTMENT,
Comptroller's Office.

Admitted and certified to the above as corrected, 8th day of August, 1845.
(Signed) J. W. McCOLLOH,
Comptroller.

To R. H. GILLETT, Esq.,
Register of the Treasury.

M. A. W.

Thomas Barrett, under his bond, dated July 6th, 1844, in account with the United States.

D'R.

To balance of his account ending September 30th, 1844, per report No. 5688			†$43,662 56 *43,652 16
To duties on merchandise to Dec. 31st, 1844			590,724 00
" " " tonnage to " " "			2,757 27
22 To light-money collected to December 31st, 1844			1,990 81
" marine-hospital money collected to December 31st, 1844	2,429 69		
Deduct commissions thereon @ one per cent	24 30		
			2,405 39
To interest received to December 31st, 1844			202 30
" fines, penalties, and forfeitures to December 31st, 1844			3 92
			†641,646 25 *641,635 85

C'R.

By payment to inspectors, &c., to Dec. 31st, 1844			†$27,470 81 *26,510 92
" contingent expenses paid to December 31st, 1844			1,187 96
" disbursements for the revenue-cutter Woodbury to December 31st, 1844			4,230 62
" disbursements for the revenue-cutter Vigilant to December 31st, 1844			503 20
" disbursemants for the revenue boats to December 31st, 1844			1,393 34
" disbursements in relation to appraisements to December 31st, 1844			1,470 58
" amount of public-store account to December 31st, 1844			635 00
" debentures paid on merchandise reported to December 31st, 1844			31,446 33
" duties on merchandise refunded to correct errors to 31st December, 1844			7,662 78
" amount paid for extra clerk-hire in office of the naval officer			368 00
" amount paid to Jesse H. Willis, late collector of S't Mark's, per 23 order of the Comptroller of the Treasury, dated Oct. 7th, 1844, and with which said Willis has been debited, per report No. 5225			9 41
By amount paid Willis H. Arnold, collector of Pearl River, per order of the Comptroller of the Treasury, dated 24th October, 1844, with which said Arnold has been debited, per report No. 5490			240 00
By three months' salary to the naval officer to 31st December, 1844	$62 50		
" three months' salary to the surveyer at New Orleans to 31st December, 1844	62 50		
" three months' salary to the surveyor of Bayou S't John to 31st December, 1844	62 50		
" three months' salary to the surveyor of Port Ponchartrain to 31st Dec'r 1844	62 50		
" three months' salary to the surveyor of Madisonville to 31st December, 1844	62 50		
			312 50
" payments to deputy collectors at Natchitoches from June 1st to 31st December, 1844			1,085 00
" am't of warrant No. 10, in favor of the treasurer, dated November 22d, 1844	565 71		
" am't of warrant No. 3288, in favor of the treasurer, dated December 31st, 1844	369,003 00		
			369,565 71
" commissions on dollars, (*$439,866.85,) †441,932.37, at one per cent			†4,419 32 *4,398 67

* Erased. † Interlined in red.

Balance due to the United States		189,645 69
Dollars	†641,646 25 *641,635 85	
The balance due to the United States, per his account ending Dec. 31st, 1844		170,398 58
24 Add amount overcharged for payments to inspectors last acc't, viz:		
Overpaid N. C. Snethen for ma'king, &c. (†Allowed under the authority of the Comptroller's circular, 8th Nov. 1841.)	*653 70	
Overpaid S. Boyd, weigher, his fees for weighing, $440.61—ch'ged $951.62	511 01	
Add amount (†erroneously) (*over) charged to contingent expenses, viz:		
Sundry bills chargeable in account for building new marine hospital, particularized in last statement	213 50	
" amount paid N. O. Republican advertising unclaimed goods, (must be paid out of proceeds of sales,) viz: No. 7, $700.00; No. 11, $580.00	1,280 00	
" am't paid D. W. Noble's subscription to Daily N. O. Herald, disallowed	$5 00	
" am't paid J. Beardslee's bill, subscription to N. O. Bulletin, disallowed	12 00	
	17 00	
" a'mt paid Whiting & Shummerhorn's bill for carriage-hire, chargeable to light-house account	7 50	
" am't charged for payment to G. W. Lewis, as inspector at Natchitoches, a bill receipted by Lewis himself, accompanied with the usual affidavit, is required	822 00	
" am't paid R. Coudon's bill, keeping a horse for the coptain of the night-watch, disallowed	15 00	
Add am't of Bailie Payton's (dist. attorney's) bill for fees:		
25 No. 5, 459.00, his bill of fees No. 17, (judge's certificate of probable cause wanted,) 255.00	714 00	
By amount overpaid D. Clark, surveyor at Lafayette, (†from 29) (*appointed 14) June, 1844, (†date of oath to 30th Sept., 1844, is 3 months (†2) (*17) days, at $250 per annum	†170 13 *159 83	
By amount overcharged for disbursements for revenue-cutter Woodbury, last statement:		
" ‡am't paid Jos. Dyer's bill for meat, vegetables; disallowed	26 28	
" ‡am't paid Hitchcock's & Bro's bill for beef, &c., disallowed	104 71	
" §am't paid P. Gernon's bill for arresting deserters disallowed	50 00	
	180 99	
" am't charged for payment to deputy collector at Natchitoches, last statement, payable out of official emoluments (†allowed under authority given by the Sec'y of the Treasury, dated 10th Sept, 1841)	*630 00	
" am't overcharged to public-store account per last statement, viz:		
" am't paid W. H. Wilder, store-keeper, from 25th July to 30th Sept., 1844, authority wanted for increase of pay	$74 23	
" am't of extra pay to J. E. Quere, late store-keeper, disallowed	113 66	
" am't of extra pay to E. Wiltz, deputy store-keeper, disallowed	93 00	

*Erased. †Interlined in red. ‡As they are mess provisions they should be paid by the officers. §The officers of the vessel should make the arrests.

	" overpaid to E. Wiltz, deputy store-keeper, for 3d q'r 1844	92 00			
26	By subscription to Louisiana Courier, disallowed	12 00			
			384 89		
	Amount carried forward		Dollars 4. 316 02		170, 398 58
	Amount brought forward			$4, 316 02	$170, 398 58
	Add amount overcharged for payments to inspectors, &c., in acc't now stated, viz:				
	Am't overpaid C. Hurst, inspector, absent 19 days, @ $3.00	57 00			
	" " O. B. Bradfute, inspector, absent 24 days, at $3.00	72 00			
	" overpaid L. E. Collins, inspector, absent 16 days, at $3.00	48 00			
	" paid P. E. Crozat, inspector, does not appear on Sec'y's books	171 00			
	" paid E. Faures, inspector, removed 29th August, 1844, disallowed	183 00			
	" paid C. E. Perrault, inspector, does not appear on Secretary's books	183 00			
	" A. J. Fallen, night inspector, does not appear on Secretary's books	276 00			
	" paid W. Silk, night inspector, does not appear on Secretary's books	258 00			
	" paid John Dallman, night inspector, does not appear on Secretary's books	195 00			
	" paid F. Barnes, j'r, night inspector, does not appear on Secretary's books	111 00			
	" paid M. Monaghan, night inspector, does not appear on Secretary's books	93 00			
	" paid N. C. Snethen, marker, fees for marking spirits, cordials & wines, *675.55	*306 19			
	Allowed under authority of Comp. circular of 8th November, 1841.				
27	Am't overpaid S. Boyd, weigher, his fees, (see abstracts) $1,012.47	599 72	{ †2, 246 72 *2, 552 91		
	Am't overcharged for disbursements on acc't of revenue boats, viz:				
	" paid M. Crossman, $103.55, instead of 90 days' pay as boatman for 3 months, no authority for raising his wages	$13 55			
	" paid John Price, boatman, raising his wages $10 per month	30 00			
	" W. Wilson, boatman, do. do. do., $10 per month	30 00			
			73 55		
	" am't (†erroneously) (*over) charged for contingent expenses, viz, [†these bills are chargeable in separate account, whis is now being stated by Auditor:]				
	" paid Southern Traveller, advertising, chargeable to new marine hospital	$13 00			
	" paid I. Rayall's bill [†as keeper] [*gard'ner] Nos. 7 & 14, chargeable to new marine hospital	50 00			
	" paid N. O. Republican, advertising unclaimed goods, (collector must send an acc't sales, deducting these charges,)	162 00			
	" paid R. Coudon, keeping a horse for night inspector, disallowed	45 00			
	" paid John J. Langdon, as inspector (the bill must be accompanied with the usual affidavits)	255 00			
	" paid M. Swinburn, discharging coal, [†for revenue marine service,] disallowed; must be paid by the contractor	50 00			

* Erased. † Interlined in red.

28	Am't paid A. McDonald, piloting coal-barge, [†revenue marine service;] must be paid by contractor	24 00		
	Am't paid David Hayden, travelling expenses to Washington, disallowed	150 00		
			749 00	
	Disbursments for revenue-cutter Woodbury overcharged, viz:			
	‡Am't of Hitchcock's & Bro.'s bill for provisions, disallowed	$47 68		
	‡Am't of J. Dyer's bill for beef, &c., disallowed	22 88		
	[†All'd under authority given by the Sec'y of the Treasury, dated 10th Sept., 1841.]			
	Am't paid W. P. Rayburn, deputy collec., Natchitoches, payable out of emoluments*	455 00		
	Disbursements for revenue-cutter Vigilant, overcharged, viz:			
	Am't of Palmo, Whitney & Co.'s bill for provisions, chargeable to light-house disbursements	93 09		
	One-half barrel beef charged in S & R. Halley & Co.'s bill, disallowed	5 50		
			103 59	
	Amount carried forward		$7,559 44	$170,398 58
	Amount brought forward		$4,316 02	$170,398 58
	Add amount overcharged to public-store account, viz:			
	Overpaid W. H. Wilder, store-keeper, pay increased without authority	99 00		
	Overpaid E. Wiltz, deputy store-keeper, pay increased $1.00 per day, 92 days	92 00		
			191 00	
	By am't overcharged for Treasurer's draft not covered by warrant		10 55	
29	" am't charged for payment on acc't of new marine hospital, not covered by warrant		9,800 00	
	" amount charged for payment on acc't of G. Dorsey, late collector, (*must settle it between themselves.) [†Suspended]		3 80	
	" am't charged for Treasury notes and interest will be credited by warrant in next statement		1,570 62	
	" commissions overcharged by last statement	†31 28 *18		
	" commissions overcharged in account now stated	†133 94 *154 59		
			†165 22 *185 77	†19,700 63 *21,755 77
				†190,099 21 *192,154 35
	Deduct amount credited for monies received on account of G. Dorsey's last statement		51 08	
	" am't erroneously credited for deposits to secure duties, last account	2,076 28		
	Less am't erroneously charged for excess of deposit	1,673 84	402 44	
				453 52
			Dollars	†189,645 69 *191,760 83

NOTE.—The collector will please send the account of sales of unclaimed merchandise, and also an account of storages collected.

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE,
July 2nd, 1845.

30 Examined & stated by—
(Signed) J. COLEGATE.

‡As they are mess provisions, should be paid by the officers. †Inte. lined in red. *Erased

COMPTROLLER'S OFFICE, *5th August*, 1845.
J. BARTMAN NORTH.

(Signed)
W. A. W.

No. 5856.]

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE,
October 3rd, 1845.

I have examined and adjusted the accounts of Thomas Barrett, collector of customs for the district of New Orleans, in the State of Louisiana, under his bond dated July 6th, 1844, commencing on the 1st day of January, and ending on the 31st day of March, 1845, and find that he is chargeable with the following sums, viz:

To balance of his account ending December 31st, 1844, per report No. 5700.		189,645 69
" duties on merchandise, to March 31st, 1845		570,707 97
" duties on tonnage to March 31st, 1845		2,697 63
" light-money collected to March 31st, 1845		1,359 93
" Marine-hospital money collected to March 31st, 1845	2,958 21	
Deduct commissions thereon @ one per cent	29 58	
		2,928 63
" interest received to March 31st, 1845		163 34
" net proceeds of sales of unclaimed merchandise, to March 31st, 1845		78 65
	Dollars.	767,581 84

I also find that he is entitled to the following credits:

By payments to inspectors to March 31st, 1845		20,785 39
" contingent expenses paid to " " "		1,125 08
31 By disbursements for the revenue-cutter Woodbury, to March 31st, 1845		4,403 59
" disbursements for the revenue-cutter Vigilant, to March 31st, 1845		51 16
" disbursements for the revenue-boats, to March 31st, 1845		1,823 50
" disbursements in relation to appraisements, to March 31st, 1845		1,288 10
" fines, &c., costs of suits, to March 31st, 1845		853 87
" debentures paid on merchandise exported, to March 31st, 1845		117,815 19
" duties on merchandise refunded to correct errors, to March 31st, 1845		2,281 38
" amount paid for extra clerk-hire in office of the naval officer.		360 00
" am't paid William H. Ware, collector of S't Marks, per order of the Comptroller of the Treasury, dated December 12th, 1844, and with which said Ware has been debited, per report No. 5442		1,780 00
" am't paid Robert Mitchell, collector of Pensacola, per order of the Comptroller of the Treasury, dated December 12th, 1844, and with which said Mitchel has been debited, per report No. 5500		1,500 00
" amount paid on acc't of Thomas Gibbes Morgan, late collector of Mississippi, and which said Morgan will be debited.		3 26
" three months' salary to the naval officer, to March 31st, 1845.	62 50	
" three months' salary to the surveyor, New Orleans, to March 31st, 1845	62 50	
32 By three months' salary to the surveyor of bayou S't John, to March 31st, 1845	62 50	
By three months' salary to the surveyor of Port Pontchartrain, to March 31st, 1845	62 50	
By three months' salary to the surveyor of Madisonville, to March 31st, 1845	62 50	
		312 50
By amount of warrant No. 14, in favor of the Treasurer, dated January 25th, 1845	1,163 90	
" amount of warrant No. 28, in favor of the Treasurer, dated February 25th, 1845	806 72	
" amount of warrant No. 3327, in favor of the Treasurer, dated March 21st, 1845	22,750 00	
" amount of warrant No. 3329, in favor of the Treasurer, dated March 26th, 1845	34,700 00	
" amount of warrant No. 3331, in favor of the Treasurer, dated March 28th, 1845	9,700 00	
" amount of warrant No. 3332, in favor of the Treasurer, dated March 29th, 1845	26,200 00	

" amount of warrant No. 3458, in favor of the Treasurer, dated March 29th, 1845	308,000 00	
		403,320 62
" commissions on dollars 558,074.37, @ one per cent		5,580 74
And that the balance due the United States on the 1st day of April, 1845, amounted to		204,297 46
Dollars		767,581 84

As will appear from the statements and accounts herewith transmitted for the decision of the Comptroller of the Treasury thereon.

(Signed) W'M COLLINS,
1st Auditor.

To JAMES W. McCULLOCH,
Comptroller of the Treasury.

Auditor's balance brought down	$204,297 46
Deduct net amount of differences to his credit, as per corrected statement herewith	08 168
Dollars	202,489 30

TREASURY DEPARTMENT,
Comptroller's Office.

Admitted and certified to the above as corrected 23rd day of October, 1845.

(Signed) J. W. McCULLOCH,
Comptroller.

R. H. GILLETT, Esq.,
Register of the Treasury.

W. A. W.

Thomas Barrett, under his bond dated July 6th, 1844, in account with the United States.

D'R.

To balance of his account ending 31st December, 1844, per report No. 5700		$189,645 69
" duties on merchandise to March 31st, 1845		570,707 97
" " " tonnage to " " "		2,697 63
" light-money collected to " " "		1,359 93
" marine-hospital money collected to March 31st. 1845	$2,958 21	
Deduct commissions thereon @ one per cent.	2,958	
		2,928 63
To interest received to March 31st, 1845		163 34
" net proceeds of unclaimed merch'd'ze to March 31st, 1845		78 65
Dollars		767,581 84

C'R.

By payments to inspectors, &c., to March 31st, 1845	{ †21,120 98 { *20,785 38
" " to dep. collectors at Natchitoches	*465 09
34 By contingent expenses paid to March 31st, 1845	1,125 00
" disbursements for the revenue-cutter Woodbury to March 31st, 1845	{ †4,403 09 { *4,403 59
By disbursements for the revenue-cutter Vigilant to March 31st, 1845	51 16
" disbursements for the revenue-boats to March 31st, 1845	1,823 50
" disbursements in relation to appraisements to March 31st, 1845	1,288 10
" fines, &c., costs of suits to March 31st, 1845	853 87
" debentures paid on merchandise exported to March 31st, 1845	117,815 19
" duties on merchandise refunded to correct errors to March 31st, 1845	2,281 38
" amount paid extra clerk-hire in office of the naval officer	360 00
" amount paid William H. Ware, collector of S't Mark's, per order of the Comptroller of the Treasury, dated Dec. 12th, 1844, and with which said Ware has been debited, per report No. 5442	1,780 00

*Erased. †Interlined in red.

" amount paid Robert Mitchell, collector of Pensacola, per order of the Comptroller of the Treasury, dated December 12th, 1844, and with which said Mitchell has been debited, per report No. 5500			1,500 00
" amount paid on account of Thomas Gibbes Morgan, late collector of Mississippi, and which said Morgan will be debited			3 26
35 By three months' salary to the naval officer to March 31st, 1845	$62 50		
By three months' salary to the surveyor of New Orleans to March 31st, 1845	62 50		
" three months' salary to the surveyor of Bayou St't John to March 31st, 1846	62 50		
" three months' salary to the surveyor of Port Pontchartrain to March 31st, 1845	62 50		
" three months' salary to the surveyor of Madisonville to March 31st, 1845	62 50		
			312 50
" amount of warrant No. 14, in favor of the Treasurer, dated January 25, 1845	1,163 90		
" amount of warrant No. 28, in favor of the Treasurer, dated February 25, 1845	806,72		
" amount of warrant No. 3327, in favor of the Treasurer, dated March 21st, 1845	22,750 00		
" amount of warrant No. 3329, in favor of the Treasurer, dated March 26th, 1845	34,700 00		
" amount of warrant No. 3331, in favor of the Treasurer, dated March 28th, 1845	9,700 00		
" amount of warrant No. 3332, in favor of the Treasurer, dated March 29th, 1845	26,200 00		
" amount of warrant No. 3458, in favor of the Treasurer, dated March 31st, 1845	308,000 00		
			403,320 62
" commissions on dollars 558,074 37, @ one per cent		†5,588 81 / *5,580 74	
" balance due the United States		†203,489 30 / *204,297 46	
		Dollars	767,581 84

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE, *October* 1*st*, 1845.

Ex. and stated by—

JAMES M. TORBERT.

36 The balance due the United States per his acc't ending Mar. 31, 1845			$96,669 33
Add amount overcharged for payment of inspectors, &c., 3d q'r 1844:			
Overpaid S. Boyd, weigher, his fees for weighing, $440.61; charged, $951.62	$511 01		
Add amount overcharged for contingent expenses 3d q'r, 1844:			
Sundry bills chargeable to acc't for building new marine hospital	213 50		
" am't paid subscription to Daily Morning Herald disallowed	5 00		
" am't paid subscription to N. O. Com'l Bulletin disallowed	12 00		
" am't paid Whitney & Skimmerhorn, carriage-hire, chargeable to l't-house acc't	7 50		
" am't charged for payment to G. W. Lewis, as inspector at Natchitoches. (A bill receipted by Lewis himself, & verified, is required)	822 00		
" am't R. Coudon's bill, keeping horse for capt. night-watch, disallowed	15 00		

*Erased. †Interlined in red.

"	am't charged for Bailie Payton's (dist. att'y) bill of fees No. 5	459 00		
	(And bill fees, No. 17, suspended.)			
	Judge's certificate wanted	255 00		
			714 00	
				1,783 00
"	am't overpaid D. Clark, surveyor, La Fayette, 3d q'r. '44, for his salary to 30th Sep., 1844			170 13
"	am't overcharged for disbursements revenue-cutter Woodbury, 3d q'r, 1844, particularized in last statement			180 99
37	Add a'mt overcharged to public-store acc't, 3d q'r, 1844, particularized in last statement			84 89
"	am't overcharged for payments to inspectors, &c., 4th q'r, 1844:			
	Overpaid C. Hunt, inspector, absent 19 days, disallowed		57 00	
	Overpaid O. H. Bradfute, inspector, absent 24 days, disallowed		72 00	
	Overpaid L. E. Collins, inspector, absent 16 days, disallowed		48 00	
"	am't paid sundry inspectors, not authorized by the Secretary of the Treasury, particularized in last statement		1,470 00	
"	am't overpaid S. Boyd, weigher; his fees per abstracts are 1,012 47		599 72	
				2,246 72
"	am't overpaid revenue boatmen 4th q'r 1844, $10 per mo added to their wages without authority			73 55
"	am't overcharged for contingent expenses—See last statement:			
	Paid Southern Traveller, advertising, chargeable to New Marine Hospital		13 00	
	Paid I. Loyall's bill as guardian, Nos. 7 and 14, chargeable to new Marine Hospital		50 00	
	Paid R. Coudon, keeping a horse for night inspectors, disallowed		45 00	
	Paid John J. Landon as inspector; the bill must be verified		255 00	
	Paid M. Siomburn, discharging coal, disallowed; must be p'd by contractor		50 00	
38	Paid A. McDonald, piloting coal-barge; must be paid by contractor		24 00	
	Paid D. Hayden's travelling expenses to Washington, disallowed		150 00	
				587 00
"	Disbursements, cutter Woodbury, overcharged 4th q'r, 1844. Am't of Hitchcocks & Bro.'s bill for provisions, disallowed		47 68	
"	am't of I. Dyer's bill for beef, &c., disallowed		22 88	
				70 56
	Am't carried forward			6,013 85 96,669 33
	Amount carried forward			6,013 85 96,669 33
Add disbursements revenue cutter Vigilant, overcharged 4th q'r, 1844				
	Palmo, Whitney & Co.'s bill of provisions, chargeable to light-house disbursements		93 09	
	Half barrel beef, in L. & R. Halley's & Co.'s bill, disallowed		5 50	
				103 59
Add am't overcharged to public store account, 4th q'r 1844:				
	Storekeeper & deputy storekeeper; pay increased without authority			191 00
"	am't charged for treasurer's draft, 4th q'r 1844, not covered by warrant			10 55
"	am't overcharged 4th q'r 1844, for payments on account of new Marine Hospital			100 00
"	am't charged for payment on acc't of G. Dorsey, late collector: must settle it themselves			3 80
39	am't erroneously charged this q'r for *for* deposits to secure duties		1,787 84	

	Less amount erroneously credited for deposits to secure duties per last statement	402 44		
			1,385 40	
"	[*am't overcharged to public store ac. in acc't now stated:			
"	am't paid E. Wiltz, deputy storekeeper, difference of salary 4th q'r 1844, disallowed	50 00		
	Subscription to newspaper disallowed	5 00		
	Paid deputy storekeeper difference of salary 1st q'r 1845, disallowed; no voucher or name	23 00		
	W. H. Wilder, storekeeper, pay increased without authority	105 00		
"	am't paid W. S. McCulloch, disallowed, as Wilder has been paid for same time, & only one storekeeper can be allowed	279 16		
	Overpaid E. Wiltz, late deputy storekeeper; his compensation is $2 p'r day	36 00		
	Overpaid F. Dcayet, deputy storekeeper; his compensation is $2 per day	54 00		
			552 16	
	Overcharged for payments to inspectors, &c., 1st q'r 1845:			
	Paid J. J. Langdon, inspector, 15 days' leave of absence, disallowed	45 00		
40	Paid the following persons as inspectors, not authorized by the Secretary of the Treasury, viz:			
	Ber. Williams, 270; Jos. Genois, j'r, 39	309 00		
	A. M. Duporn, 48; C. S. Hayden, 72; P. E. Cruzat, 270; P. Bailey, 42	432 00		
	H. F. Chautzon, 42; J. J. Nicholson, 42; I. H. Campbell, 39; F. Thomas, 39	162 00		
	G. O. H. Forber, 30; M. F. Neville, 42; E. Faures, removed August 1st, 1844, 270; and C. Perrault, 270	612 00		
	Night inspectors, A. J. Fallen, 270; W'm Silk, 279; John Dallmar, 270; I. P. Ross, 39	849 00		
	Allowed under direction of Comptroller's circular, 8th Nov., 1841		†24 09	
	Overpaid N. C. Snethin, marking spirits, wines, cordials, & wines this q'r, amounting to $458.50.	*470 59	*2,879 59]	
	Amount overcharged for contingent expenses in acc't now stated:			
"	am't paid David Hayden for desks & chairs, payable out of official emol'	20 00		
	Paid J. Miller, piloting coal-barge; must be paid by contractor	30 00		
"	am't J. C. Johnson's bills, searching for sch'r Vigilant, disallowed; not authorized bill No. 4, $66.00; No. 5, $222	288 00		
41	am't M. Siomburn's transporting & delivering coal-boats, disallowed; the coal was to be delivered by the contractor free of expense	102 00		
"	am't R. Coudon's bill, keeping horse for capt. night inspectors, disallowed	45 00	485 00	
	Amount carried forward		11,254 35	96,669 33
	Amount brought forward		11,254 35	96,669 33
	Add amount overcharged for disbursements, revenue cutter Woodbury this q'r:			
	Paid E. Laughlin, wardroom-cook, January, February, & March, per pay-rolls, not authorized	72 85		
	Am't paid H. D. Pierce, sheriff, maintainance of a deserter; disallowed; not authorized	62 00	134 85	
"	fines, &c., that credited; the collector has not credited the United States with the moiety of case N. 6186, 1 box No. 1 B, 11,000 cigars		124 46	

* The portions inclosed in brackets marked "Suspended. J. M. McC."

n't paid W. P. Reyburn, deputy collector, Natchitoches, salary 1st q'r 1845, $0.75, & office-rent, $90, payable out of official emoluments		*465 00	
llowed under authority of Secretary of the Treasury, 10th Sept., 1841:			
paid John Boyce, deputy collector Shreveport 15th Jan. to 31st March; [†authority required to pay $1,500 per annum.] [*payable out of official emol'ts]		319 86	
Add amount charged for payment on ac. of new marine hospital, not covered by warrant		12,505 00	
" am't paid on acc't of G. Dorsey, late collector; they must settle it themselves		4 80	
" am't paid for stationery, deputy surveyor, &c., payable out of surveyor's emoluments		534 25	
" amount charged for treasury notes this quarter, not covered by warrant		8,165 34	
" am't charged for treasury notes (new emission) this quarter, not covered by warrant		72,650 00	
" commissions overcharged by last statement	$165 72		
" commissions overcharged in account now stated.	†877 42 *885 49		
		†1,042 64 *1,050 71	
			†106,735 55 *107,679 21
			†203,404 88 *204,348 54
Deduct amount credited 3d q'r 1844 for monies received in account of G. Dorsey			51 08
		Dollars	†203,353 80 *204,297 46
Add amount paid J. H. Whitemore, ass't measurer, charged in measurer's abstract; suspended for explanation; his receipt for January is signed by himself, and in February he makes his mark		$135 00	
43 Add amount overpaid Vallette & Thomas in abstract for disbursements for revenue cutter Woodbury, 8 lignumvita logs, @ 12½, charged $1.50 instead of $1.00: difference		50	
			135 50
		Dollars	203,489 30

COMPTROLLER'S OFFICE,
21st October, 1845.

I. BARTRAM NORTH.

No. 5870.] TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE, *October 14th*, 1845.

I have examined and adjusted the accounts of Thomas Barrett, collector of the customs for the district of New Orleans, in the State of Louisina, under his bond dated July 6th, 1844, commencing on ths 1st day of April, and ending on the 30th day of June, 1845, and find that he is chargeable with the following sums, viz:

To balance of his account ending March 31st, 1845, per report No. 5855		$204,297 46
" duties on merchandise to June 30, 1845		387,701 69
" " " tonnage to June 30th, 1845		1,604 37
" light money collected " " " "		1,389 57
' marine hospital money collected to June 30th, 1845	1,759 67	
Deduct commissions thereon @ one per cent	17 60	
		1,742 07
To interest received to June 30th, 1845		487 28
	Dollars	597,222 34

I also find that he is entitled to the following credits, viz:

44 By payments to inspectors, &c., to June 30th, 1845		21,546 72

	Less amount erroneously credited for deposits to secure duties per last statement	402 44		
			1,385 40	
"	[*am't overcharged to public store ac. in acc't now stated:			
"	am't paid E. Wiltz, deputy storekeeper, difference of salary 4th q'r 1844, disallowed	50 00		
	Subscription to newspaper disallowed	5 00		
	Paid deputy storekeeper difference of salary 1st q'r 1845, disallowed; no voucher or name	23 00		
	W. H. Wilder, storekeeper, pay increased without authority	105 00		
"	am't paid W. S. McCulloch, disallowed, as Wilder has been paid for same time, & only one storekeeper can be allowed	279 16		
	Overpaid E. Wiltz, late deputy storekeeper; his compensation is $2 p'r day	36 00		
	Overpaid F. Dcayet, deputy storekeeper; his compensation is $2 per day	54 00		
			552 16	
	Overcharged for payments to inspectors, &c., 1st q'r 1845:			
	Paid J. J. Langdon, inspector, 15 days' leave of absence, disallowed	45 00		
40	Paid the following persons as inspectors, not authorized by the Secretary of the Treasury, viz:			
	Ber. Williams, 270; Jos. Genois, j'r, 39	309 00		
	A. M. Duporn, 48; C. S. Hayden, 72; P. E. Cruzat, 270; P. Bailey, 42	432 00		
	H. F. Chautzon, 42; J. J. Nicholson, 42; I. H. Campbell, 39; F. Thomas, 39	162 00		
	G. O. H. Forber, 30; M. F. Neville, 42; E. Faures, removed August 1st, 1844, 270; and C. Perrault, 270	612 00		
	Night inspectors, A. J. Fallen, 270; W'm Silk, 279; John Dallmar, 270; I. P. Ross, 39	849 00		
	Allowed under direction of Comptroller's circular, 8th Nov., 1841		†24 09	
	Overpaid N. C. Snethin, marking spirits, wines, cordials, & wines this q'r, amounting to $458.50.	*470 59	*2,879 59]	
	Amount overcharged for contingent expenses in acc't now stated:			
"	am't paid David Hayden for desks & chairs, payable out of official emol'	20 00		
	Paid J. Miller, piloting coal-barge; must be paid by contractor	30 00		
"	am't J. C. Johnson's bills, searching for sch'r Vigilant, disallowed; not authorized bill No. 4, $66.00; No. 5, $222	288 00		
41	am't M. Siomburn's transporting & delivering coal-boats, disallowed; the coal was to be delivered by the contractor free of expense	102 00		
"	am't R. Coudon's bill, keeping horse for capt. night inspectors, disallowed	45 00	485 00	
	Amount carried forward		11,254 35	96,669 33
	Amonnt brought forward		11,254 35	96,669 33
	Add amount overcharged for disbursements, revenue cutter Woodbury this q'r:			
	Paid E. Laughlin, wardroom-cook, January, February, & March, per pay-rolls, not authorized	72 85		
	Am't paid H. D. Pierce, sheriff, maintainance of a deserter; disallowed; not authorized	62 00	134 85	
"	fines, &c., that credited; the collector has not credited the United States with the moiety of case N. 6186, 1 box No. 1 B, 11,000 cigars		124 46	

*The portions inclosed in brackets marked "Suspended. J. M. McC."

" am't paid W. P. Reyburn, deputy collector, Natchitoches, salary 1st q'r 1845, $0.75, & office-rent, $90, payable out of official emoluments		*465 00		
†Allowed under authority of Secretary of the Treasury, 10th Sept., 1841:				
" am't paid John Boyce, deputy collector Shreveport 15th Jan. to 31st March; [†authority required to pay $1,500 per annum.] [*payable out of official emol'ts]		319 86		
42 Add amount charged for payment on ac. of new marine hospital, not covered by warrant		12,505 00		
" am't paid on acc't of G. Dorsey, late collector; they must settle it themselves		4 80		
" am't paid for stationery, deputy surveyor, &c., payable out of surveyor's emoluments		534 25		
" amount charged for treasury notes this quarter, not covered by warrant		8,165 34		
" am't charged for treasury notes (new emission) this quarter, not covered by warrant		72,650 00		
" commissions overcharged by last statement	$165 72			
" commissions overcharged in account now stated.	†877 42 *885 49			
		†1,042 64 *1,050 71		
				†106,735 55 *107,679 21
				†203,404 88 *204,348 54
Deduct amount credited 3d q'r 1844 for monies received in account of G. Dorsey				51 08
			Dollars	†203,353 80 *204,297 46
Add amount paid J. H. Whitemore, ass't measurer, charged in measurer's abstract; suspended for explanation; his receipt for January is signed by himself, and in February he makes his mark		$135 00		
43 Add amount overpaid Vallette & Thomas in abstract for disbursements for revenue cutter Woodbury, 8 lignumvita logs, @ 12½, charged $1.50 instead of $1.00: difference		50		
				135 50
			Dollars	203,489 30

COMPTROLLER'S OFFICE,
21*st October*, 1845.

I. BARTRAM NORTH.

No. 5870.]

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE, *October 14th*, 1845.

I have examined and adjusted the accounts of Thomas Barrett, collector of the customs for the district of New Orleans, in the State of Louisina, under his bond dated July 6th, 1844, commencing on ths 1st day of April, and ending on the 30th day of June, 1845, and find that he is chargeable with the following sums, viz:

To balance of his account ending March 31st, 1845, per report No. 5856			$204,297 46
" duties on merchandise to June 30, 1845			387,701 69
" " " tonnage to June 30th, 1845			1,604 37
" light money collected " " " "			1,389 57
" marine hospital money collected to June 30th, 1845		1,759 67	
Deduct commissions thereon @ one per cent		17 60	
			1,742 07
To interest received to June 30th, 1845			487 28
		Dollars	597,222 34

I also find that he is entitled to the following credits, viz:

44 By payments to inspectors, &c., to June 30th, 1845		21,546 72

	" contingent expenses paid to June 30th, 184		947 21
	" disbursements for revenue-cutter Woodbury, to June 30th, 1845		2,597 20
	disbursements for revenue boats, to June 30th, 1845		2,067 00
	" disbursements in relation to appraisements, to June 30th, 1845		1,183 02
	" amount of public store account, to June 30th, 1845		294 56
	" costs of suits paid to June 30th, 1845		84 95
	" debentures paid on merchandise exports, to June 30th, 1845.		202,915 15
	" duties refunded to correct errors to June 30th, 1845		23 79
	" amount paid for extra clerk in office of the naval officer to June 30th, 1845		364 00
	" am't paid to the following collectors of the customs, per orders of the Comptroller of the Treasury, with which they have been respectfully debited, viz:		
	William H. Ware, S't Marks, debited for report No. 5605	2,100 00	
	William H. Ware, S't Marks, " for report No. 5806	1,900 00	
	E. H. Taylor, Vicksburg, " for report No. 5742	463 00	
	I. D. Elliott, Natches, debited for report No. 5758	50 00	
45	By A. W. Walker, S't Augustine, debited for report No.	500 00	5,013 00
	" three months' salary to the naval officer to June 30th, 1845	62 50	
	" three months' salary to the surveyor of New Orleans to June 30th, 1845	62 50	
	" three months' salary to the surveyor of Bayou S't John, to June 30th, 1845	62 50	
	" three months' salary to the surveyor of Port Pontchartrain to June 30th, 1845	62 50	
	" three months' salary to the surveyor of Madisonville to June 30th, 1845	62 50	
			312 50
	" amount of the following warrants in favor of the Treasurer of the United States:		
	No. 3463, (Treasury notes,) dated April 8th, 1845	23,050 00	
	No. 3464, ditto, dated April 21, 1845	27,900 00	
	No. 3465, ditto, " May 1st, 1845	21,550 00	
	No. 3469, ditto, " May 9th, 1845	8,165 00	
	No. 3480, ditto, " June 3rd, 1845	15,000 00	
	No. 3483, ditto, " June 4th, 1845	100 00	
	No. 3554, (Marine Hospital,) dated June 30, 1845	4,691 45	
	No. 3555, ditto, dated June 30, 1845	5,679 99	
46	By:		
	" No. 3556, Marine Hospital, dated June 30th, 1855	17,782 33	
	No. 3605. Deposits dated June 30th, 1845	155,000 00	
			278,919 11
	" commissions on dollars 519,699.34 at one per cent		5,196 99
	And that the balance due to the United States on the first day of July, 1845, amounted to		75,757 33
		Dollars	597,222 44

As will appear from the statements and accounts herewith transmitted for the decision of the Comptroller of the Treasury thereon.

W'M COLLINS,
First Auditor.

To JAMES W. MCCULLOCH, Esq.,
First Comptroller of the Treasury.

Auditor's balance brought down	$75,757 33
Deduct this sum, being amount of net differences to his credit as per corrected statement herewith	1,406 61
Balance due the United States	74,356 72

COMPTROLLER'S OFFICE.

Admitted and certified to the above as corrected 26th day of November, 1845.
(Signed) J. W. MCCULLOCH,
Comptroller.

To R. H. GILLETT, Esq.,
Register of the Treasury.

47 *Thomas Barrett, collector, under his bond, dated 6th July, 1844, in account with the United States.*

D'R.

By balance of his account ending March 31st, 1845, per report		†$203,489 30
No. 5856		* 204,297 46
" duties on merchandise to June 30th, 1845		387,701 69
" duties on tonnage to June 30th, 1845		1,604 37
" light money collected to " " "		1,380 57
" marine hospital money collected to June 30th, 1845	1,759 67	
Deduct commission thereon at one per cent	17 60	
		1,742 07
" interest received to June 30th, 1845		487 28
	Dollars	*597,222 44
	Dollars	596,414 28

C'R.

By payment of inspectors, &c., to June 30th, 1845		† $21,668 24 * 21,546 72
" payment to W'm P. Rayburn, deputy collector at Natchitoches, to June 30th, 1845		†465 00
" contingent expenses paid to June 30th, 1845		947 21
" disbursements for revenue-cutter Woodbury to June 30th, 1845		2,597 20
" disbursements for revenue boats to June 30th, 1845		2,067 00
" disbursements in relation to appraisements to June 30th, 1845		183 02
" amount of public store account to June 30th, 1845		294 56
48 By costs of suits paid to June 30th, 1845		84 95
" debentures paid on merchandise exported to June 30th, 1845		202,915 15
" duties refunded to correct errors to June 30th, 1845		23 70
" amount paid for extra clerk-hire in office of the naval officer to June 30th, 1845		364 00
" amount paid to the following collectors of the customs per order of the Comptroller of the Treasury, with which they have been debited, viz:		
W'm A. Ware, S't Marks, debited per report 5605	2,100 00	
W'm A. Ware, " " " report 5806	1,900 00	
E. H. Taylor, Vicksburgh, " " report 5742	463 00	
J. D. Elliott, Natches " " report 5758	50 00	
A. W. Walker, S't Augustine " " report ——	500 00	
		5,013 00
" three months' salary to the naval officer to June 30th, 1845	62 50	
" three months' salary to the surveyor of New Orleans to June 30th, 1845	62 50	
" three months' salary to the surveyor of Bayou S't John, to June 30th, 1845	62 50	
" three months' salary to the surveyor of Port Pontchartrain to June 30th, 1845	62 50	
49 By three months' salary to the surveyor of Madisonville to June 30th, 1845	62 50	
		312 50

" amount of the following warrants in favor of the Treasurer of the United States, viz:

No. 3463,	(Treasury notes,)	dated	April 8th, 1845	23,050 00
No. 3464,	(ditto)	"	April 21st, 1845	27,900 00
No. 3465,	(ditto)	"	May 1st, 1845	21,550 00
No. 3469,	(ditto)	"	May 9th, 1845	8,165 34
No. 3480,	(ditto)	"	June 3d, 1845	15,000 00
No. 3483,	(ditto)	"	June 4th, 1845	100 00
No. 3554,	(Marine hospital)	"	June 30th, 1845	4,691 45
No. 3555,	(ditto)	"	June 30th, 1845	5,679 99
No. 3556,	(ditto)	"	June 30th, 1845	17,782 33

No. 3605, (deposit) " June 30th, 1845		155,000 00	
			278,919 11
" commissions on dollars †520,291 79 / *519,699 34-100 @ one per cent			†5,202 92 / *5,196 99
" balance due to the United States			*75,757 33 / †74,356 72
		Dollars	†596,414 28 / *597,222 44
50 The balance due to the United States, per his account ending June 30th, 1845, is			$55,764 00
Add amounts overcharged, viz, payments to inspectors, &c., 3d q'r, 1844, viz:			
Overpaid S. Boyd, weigher, his fees for weighing, $440.60; charged $951.62		50 00	
Add amount overcharged, contingent expenses 3d q'r 1844, viz:			
Am't paid for subscription to Daily Morning Herald, disallowed		5 00	
Am't paid for subscription to New Orleans Commercial Bulletin, disall'd		12 00	
Am't paid to Whiting & Skimmerhorn for carriage-hire, chargeable to light-house acc't		7 50	
Am't charged for payment to G. W. Lewis, as inspector at Natchitoches, (a bill receipted by Lewis himself and verified as usual is required)		822 00	
Am't of R. Coudon's bill for keeping a horse for captain of night-watch, disallowed		15 00	
Am't charged for Bailie Peyton's, dist. attorney, bill of fees, No. 5, $459.00, and bill for fees, No. 17, (judge's certificate wanting,) $255.00		714 00	
Am't overpaid D. Clark, surveyor of La Fayette, 3d q'r 1844, for his salary to 30th September, 1844		170 13	
Am't overcharged disbursements for revenue-cutter Woodbury, 3d q'r 1844, as particularized in statement of account for said quarter		180 99	
51 Add am't overcharged to public store account, 3d q'r 1844, particularized in statement of account for said quarter		384 89	
Add amount overcharged for payments to inspectors, &c., 4th q'r, 1844, viz:			
Overpaid C. Hunt, inspector, absent 19 days, @ $3 per day	$57 00		
Overpaid O. H. Bradfute, " " 24 days, @ $3 per day	72 00		
Overpaid L. E. Collins, " " 16 days, @ $3 per day	48 00		
Add am't paid to sundry inspectors not authorized by the Secretary of the Treasury, as particularized in statement of account for 4th quarter 1844	1,470 00		
Add am't overpaid S. Boyd, weigher, (his fees per abstract are $1,012.47)	599 72		
		2,246 72	
Carried forward		$5,069 24	$55,764 00
Amount brought forward		5,069 24	55,764 00
Add am't overpaid revenue boatmen, 4th q'r 1844, $10 added to their pay per month without authority.		73 55	
Add am't overcharged for contingent expenses, 4th q'r 1844, viz:			
Paid Southern Traveller for advertising, chargeable to new marine hospital	13 00		
Paid J. Loyall's bills as gard'ner, Nos. 7 & 14, chargeable to new marine hospital	50 00		
52 Paid R. Coudons for keeping a horse for capt. of night inspectors, disallowed	45 00		

*Erased. †Interlined in red.

Paid John J. Langdon, as inspector; the bill must be verified	225 00		
Paid M. Swinburn, discharging coal; disallowed; to be paid by contractor	50 00		
Paid A. McDonald, piloting coal-barge; disallowed; must be paid by contractor	24 00		
Paid David Hayden's travelling expenses to Washington; disall'd	150 00		
		587 00	
Add disbursements for revenue-cutter Woodbury, overcharged, 4th q'r 1844, viz:			
Am't of Hitchcock & Bro's bill for provisions; disallowed	47 68		
Am't of J. Dyer's bill for beef, &c., disallowed	22 88		
		70 56	
Add disbursements for revenue-cutter Vigilant, overcharged, 4th q'r 1844, viz:			
Am't of Palmo, Whitney & Co.'s bill for provisions, chargeable to light-house disbursements	98 09		
Am't of half barrel of beef, charged in S. & R. Halley's & Co.'s bill; disallowed	5 50		
		103 59	
Add am't overcharged to public store account, 4th q'r 1844, viz:			
53 " Store-keeper's & deputy store-keeper's pay increased without authority		191 00	
" Am't charged for Treasurer's draft 4th q'r 1844, not covered by warrant		10 55	
" Am't overcharged 4th q'r 1844, for payments on account of new marine hospital		100 00	
" Am't charged for payment on acc't of G. Dorsey, late collector; must settle it themselves		3 80	
[* Add am't overcharged to public store account 1st quarter, 1845, viz:			
Am't paid E. Wiltz, deputy store-keeper, difference of salary 4th q'r 1844, disallowed	50 00		
Am't paid subscription to newspaper, disallowed	5 00		
Am't paid deputy store keeper, difference of salary, 1st q'r 1845, disallowed; no voucher or name	23 00		
Am't paid W. H. Wilder, store-keeper; pay increased without authority	105 00		
Am't paid W. S. McCulloch, disallowed, as Wilder has been paid for same time; only one store-keeper can be allowed	279 16		
Am't overpaid C. Wiltz, late deputy store-keeper; his compensation is $2 per day	36 00		
54 Am't overpaid F. Ducayet, deputy store-keeper, his compensation being $2 per day	54 00		
		522 16	
Am't overcharged for payments to inspectors, &c., 1st q'r 1845, viz:			
Paid J. J. Langdon, inspector, 15 days' leave of absence; disallowed	45 00		
Paid to the following persons as inspectors, not authorized as such by the Secretary of the Treasury, viz:			
Ben Williams, $270; Jos. Genvis, j'r, $39; A. M. Dupern, $48; C. S. Hayden, $72	$429 00		
P. E. Crozat, $270; P. Bailey, $42; H. F. Cantzon, $42; J. J. Nicholson, $42	396 00		
J. H. Campbell, $39; F. Thomas, $39; G. O. H. Forbes, $30; M. F. Neville, $42	150 00		
E. Faures, removed Aug., 1844, $270; C. Perrault, $270	540 00		
Amount carried forward	$1,560 00	$6,761 45	$55,764 00
Amount brought forward	$1,566 00	$6,761 45	$55,764 00

*The portions inclosed in brackets marked "suspended."

	Night inspectors are A. J. Fullon, $270; W'm Silk, $270; John Dallman, $270	810 00	
	J. P. Ross, $39	39 00	†2,409 00
	(†Allowed: authority of Comptroller's circular, 8th Nov., 1841, 1st q'r 1845,) overpaid N. C. Snethen, marking spirits, cordials, & wines this q'r, am'ts to *$458 30	*470 59	*2,879 59*]
	Add am't overcharged for contingent expenses 1st q'r, 1845.		
55	Am't paid David Hayden for desk & chairs, payable out of official emoluments	20 00	
	Am't paid J. Miller for piloting coal-barges; the coal was to be delivered by contract free of expense	30 00	
	Am't of J. C. Johnson's bills, searching for sch'r Vigilant; disallowed, not authorized; bill No. 4, $66.00; No. 5, $222.00	288 00	
	Am't of Swinburn's bill for transportation & delivery coal-boats, disallowed; the boat was to be delivered free of charge by the contractor	102 00	
	Am't of Coudon's bill for keeping a horse for captain of night inspectors; disallowed	45 00	485 00
"	amount overcharged disbursements for revenue-cutter Woodbury, 1st q'r 1845, viz:		
	Paid E. Laughlin, ward-room cook, January, February, & March, per pay-roll, disallowed, not authorized by the Secretary of the Treasury	72 85	
	Paid H. D. Piere, sheriff, for maintainance of a deserter; disallowed, not authorized	62 00	
"	Am't of fines, short credited, the collector has not credited the United States with their moiety of case No. 6186; 1 box No. 1, B,		
56	Add: 11,000 cigars	124 46	
	(†Allowed in 1st q'r accounts, 1845, as per authority of the Secretary, 10th Sept., 1841.)		
"	am't paid W. P. Reyburn, deputy collector, Natchitoches, salary, 1st q'r 1845, $375, & office-rent, $90; payable out of official emoluments	*465 00	
"	am't paid John Boyce, deputy collector, Shreveport, from 15th January to 31st, March, 1845, payable out of official emoluments	319 86	
"	am't charged for payment on acc't of New marine hospital, not covered by warrant	12,505 00	
"	am't paid on account of G. Dorsey, collector; they must settle it themselves	4 80	
"	am't paid for stationary & deputy surveyor, &c., payable out of surveyor's official emoluments	534 25	
"	am't charged for Treasury notes, (new emission,) 1st q'r 1845, not covered by warrant	50 00	
"	[*Am't overcharged payments to inspectors in account now stated.		
	Am't paid P. Maspero, 2 days' leave of absence, @ $3 per day; disallowed	6 00	
	Am't paid L. A. Besancon, (no voucher,) $273; J. S. Haines, (no voucher,) $273	546 00	
57	Am't paid the following persons as inspectors, who do not appear to have been authorized as such by the Secretary of the Treasury, viz:		
	P. E. Crozat, $273; A. M. Dupern, $273; P. Baily, $273; M. L. Neville, $273	1,092 00	
	J. J. Nicholson, $273; Jos. Genois, j'r, $273; G. M. Forbes, $273; Benj. Williams, $297	1,116 00	
	River inspectors, viz: F'd Faures, $273; Cha's Perrault, $273	546 00	
	Night inspectors, viz: A. J. Fallon, $273; W'm		

*The portions inclosed in brackets marked "suspended."

	Silk, $273; J. Dallman, $273; J. P. Ross, $273	1,092 00		
	Am't overpaid N. C. Snethen, marking wines, spirits, & cordials this quarter, amounts to *278.15	*544 97	*4,942 97	
	His fees amounting to only †399.60	†423 45	†4,821 45	
	Amount carried forward		{ *29,297 23 / †28,150 12 }	55,764 00
	Amount brought forward		{ †28,150 23 / *$29,297 23 }	$55,764 00
Add	am't overcharged contingent expenses in acc't now stated, viz:			
	Am't paid Jeffersonian Republican for advertising unclaimed goods; should have been paid out of proceeds of sales	$348 00		
	Am't paid bills, viz:			
58	I. Penoyers, $138.04; & A. Latham's $600 on acc't of revenue-boat R. J. Walker, being more than the sum authorized to be expended for said boats; disallowed	144 04		
	Am't paid R. Condon's bill for keep' a horse for captain of night inspectors; disallowed	45 00		
	Am't paid for mileage to the following persons as river inspectors, who do not appear to have been authorized as such by the Secretary of the Treasury, viz:			
	Ed. Faures, $25; Cha's Perrault, $25.00	50 00		
	Am't overpaid A. L. Withers, late inspector at Shreveport, his pay for 7 months 23 days, @ $20 per month; charged $159.33 instead of $154.84	4 49		
			591 53	
"	am't overcharged debentures paid during this quarter, viz:			
	Am't overissued and overpaid debentures No. 420, Barber Bro's & Co., April 25th, 1845	100 00		
	Am't overissued and overpaid debentures No. 638, M. Doyle, June 12th, 1845	95		
			100 95	
"	disbursements for revenue-cutter Woodbury, overcharged in this account:			
	Am't paid E. Laughlin, ward-room cook, April, May, & June, not authorized by the Secretary of the Treasury; disallowed	76 55		
	Add am't of commission on disbursements for revenue-cutter Woodbury, overcharged	1 04		
			77 59	
"	am't overcharged to public-store account in account now stated, viz:			
	Am't paid Brander, Williams & Co. for 2 half pipes of brandy, stored by them and delivered to other persons under false pretenses; disallowed	322 00		
	Am't paid to W. H. Wilder, store-keeper, @ $1,500 per annum, instead of $3 per day; no authority for raising his pay; disallowed	102 00		
	Am't paid F. Ducayel, deputy store-keeper, @ $3.00 per day, instead of $2.00; no authority for raising his pay; disallowed	91 00		
"	amount disallowed in store-keeper's acc't, viz:			
	Am't paid F. Ducayet, deputy store-keeper, difference of salary; no voucher	27 00		
	Am't paid J. Flint, for alleged to have been lost out of custom-house	57 80		
			599 80	
	Am't paid to W'm P. Reyburn, deputy collector at Natchi-			

* Erased. † Interlined in red.

60	toches, salary for 2nd q'r 1845, $375, & office-rent, $90, payable out of official emoluments			*465 00	
	(† Allowed under authority of Secretary of the Treasury, 10 Sept., 1841.)				
Add	am't paid John Boyce, deputy collector at Shreveport, salary 2d quarter 1845, payable out of official emoluments			375 00	
"	am't charged for surveyor's office expenses 2d q'r 1845, payable out of official emoluments			540 35	
	Amount carried forward			†30,425 34 *31,957 45	$55,764 00
	Amount brought forward			†$30,425 34 *31,957 45	55,764 00
"	Am't overcharged for revenue-boats in account now stated:				
	Am't paid to C. Lathum & D. Fisher for work at English turn, 11½ days each, @ $1.00, not authorized; disallowed.			23 00	
"	Am't charged for naval officer's office expenses, 2d q'r 1845, payable out of official emoluments			375 00	
"	Am't charged for payment on account of new marine hospital, not covered by warrant			7,668 07	
"	Am't charged for Treasury notes in account now stated, not covered by warrant			8,385 98	
"	commissions overcharged per last statement	†1,042 64 *1,050 71 †891 58			
61	less commissions short charged in account now stated	*885 65		†151 06 *165 06	†47,038 45
					*48,574 56
					*104,238 56 †102,802 45
Deduct	am't credited 3d q'r, 1844, for monies received acc't of G. Dorsey			51 08	
"	am't of the following sums credited to him in this statement by not charged by him, viz:				
	marine-hospital disbursements, 3d q'r, 1844	4,691 45			
	marine ditto do. 4th q'r, 1844.	5,679 99			
	marine ditto do. 1st q'r, 1845	17,782 33		28,153 77	
"	amounts erroneously credited him in his account for deposits to secure duties	1,761 78			
	less am't erroneously charged by him per last statement for deposits to secure duties	1,385 40		376 38	
					28,581 23
				Dollars	†74,221 22 *75,757 33

TREASURY DEPARTMENT, FIRST AUDITOR'S OFFICE,
October 11th, 1845.

Ex. and stated by—

J. COLGATE.

62	Add the following sums suspended in 1st q'r account 1845, viz:		
	Am't paid J. H. Whitemore, ass't measurer, charged in measurer's abstract, suspended for explanation; his receipt for January is signed by himself, and February he makes his mark		$135 00
	" Overpaid Vallette & Thomas in abstract of disbursements		

* Erased. † Interlined in red.

for revenue-cutter Woodbury, 8 lignum-vitæ logs, @ 12½ c'ts each, $1.50, instead of $1.00; diff		50	
			135 50
			Dollars 74,356 72

COMPTROLLER'S OFFICE, *25th Nov.*, 1845.

J. BARTRAM NORTH.

No. 6391.] TREASURY DEPARTMENT, FIRST AUDITOR'S OFFICE, *31st July*, 1846.

I have examined and adjusted the accounts of Thomas Barrett, collector of the customs for the district of New Orleans, in the State of Louisiana, under his bond dated July 6th, 1844, commencing on the 1st day of July and ending on the 30th day of September, 1845, and find that he is chargeable with the following sums, viz:

To balance of his account ending June 30th, 1845, per report No. 5870			$75,757 33
" duties on merchandise to September 30th, 1845			199,299 04
" duties " tonnage to September 30th, 1845			851 21
" light-money collected to September 30th, 1845			720 68
63 " marine-hospital money collected to September 30, 1845.	$700 00		
Deduct commission thereon @ one per cent	7 00		
			693 00
" interest received on sundries to September 30th, 1845			34 61
" am't paid him by W. F. Wagner, marshal, for balance due on A. Park's bonds, No. 2142 & No. 2143, for $421 & $463, and for which amount bonds in suit must be credited in T. G. Morgan's acc't			225 00
" interest paid him by W. F. Wagner, marshal, on above bonds of Parks			187 95
" am't of warrant No. 2646, on Treasurer, dated Aug. 16th, 1845.			56,000 00
			Dollars 333,768 82

I also find that he is entitled to the following credits:

By payments to inspectors, &c., to September 30th, 1845			23,472 31
" contingent expenses paid to September 30th, 1845			277 73
" disbursements for the revenue-cutter Woodbury to September 30th, 1845			3,793 98
" disbursements for the revenue-steamer G. W. Bibb to September 30th, 1845			71 93
" disbursements for the revenue-cutter Vigilant to September 30th, 1845			51 16
" disbursements for the revenue-boats to September 30th, 1845			2,512 61
" postage paid on public letters to September 3th, 1845			51 33
64 " disbursements in relation to appraisements to September 30th, 1845			1,161 70
" fines, &c., costs of suits, to September 30th, 1845			1,023 38
" debentures on merchandise exported to September 30th, 1845			92,776 27
" duties on merchandise refunded to correct errors			30 92
" am't paid for extra clerk-hire in office of naval officer			368 00
" balance of public store account to September 30th, 1845			1,670 68
" amount paid the following collectors of the customs, per order of the Comptroller of the Treasury, with which they have been debited, viz:			
A. W. Walker, collector, S't Augustine, order June 6th, 1845, debited per report 5863			1,100 00
Robert Mitchel, collector, Pensacola, order July 15th, 1845, debited per report 5972			1,500 00
Willis H. Arnold, collector, Pearl River, order July 26th, 1845, debited per report 6094			154 84
John D. Elliott, collector, Natchez, order August 28th, 1845, debited per report 5987			30 00
By twenty-two days' salary to late naval officer to July 22d, 1845.	15 07		
" seventy days' salary to naval officer to September 30th, 1845	47 43		
65 " three months' salary to surveyor of New Orleans to September 30th, 1845	62 50		

" three months' salary to surveyor of Port Pontchartrain to Sept. 30th, 1845	62 50	
" three months' salary to survey' of Bayou S't John to Sept. 30th, 1845	62 50	
" twelve months' salary to surveyor of La Fayette to Sept. 30th, 1845	250 00	
		500 00
" am't of warrant No. 3640 in favor of the Treasurer, dated Aug. 2d, 1845	6,950 00	
" am't of warrant No. 3656, in favor of the Treasurer, dated Aug. 15th, 1845	20,036 07	
" am't of warrant No. 3657, in favor of the Treasurer, dated Aug. 21st, 1845	4,659 63	
" am't of warrant No. 3750, in favor of the Treasurer, dated Sept. 30th, 1845	3,223 66	
" am't of warrant No. 3751, in favor of the Treasurer, dated Sept. 30th, 1845	7,496 15	
" am't of warrant No. 3752, in favor of the Treasurer, dated Sept. 30th, 1845	5,205 46	
" am't of warrant No. 3774, in favor of the Treasurer, dated Sept. 30th, 1845	50,000 00	
		97,570 97
" commissions on dollars 173,125.14 @ 1 per cent		1,731 25
And that the balance due the United States on the 1st day of October, 1845, amounted to		103,919 76
		Dollars 333,768 82

As will appear from the statement and accounts herewith transmitted for the decision of the Comptroller of the Treasury thereon.

WM COLLINS,
1st Auditor.

66 To JAMES W. McCULLOCH, Esq.,
Comptroller of the Treasury.

Auditor's balance brought down	$103,919 76
Deduct, this sum being the amount of net differences to his credit, as per corrected statement herewith	1,898 08
	Dollars 102,021 68

COMPTROLLER'S OFFICE.
Admitted and certified to the above as corrected 5th day of September, 1846.
J. W. McCULLOCH,
Comptroller.

To R. H. GILLETT, Esq.,
Register.

Thomas Barrett, under his bond dated July 6th, 1844, in account with the United States.

D'R.

To balance of his account ending June 30th, 1845, per report No. 5870	†$874,356 72 / * 75,757 33	
" duties on merchandise to September 30th, 1845		199,299 04
" duties on tonnage to September 30th, 1845		851 21
" light-money collected to " " "		720 68
" marine-hospital money collected to September 30th, 1845	700 00	
Deduct commissions thereon @ 1 per cent.	7 00	
		693 00
" interest received to Sept. 30th, 1845		34 61
67 To amount paid him by W. F. Wagner, marshal, for balance due on A. Park's bonds No. 2142 and No. 2143, for $421 and $463, and for which amount of bonds in suit must be credited to Thomas G. Morgan, late collector's account		225 00

*Erased. †Interlined in red.

" interest paid him by W. F. Wagner, marshal, on above bonds of Parks			187 95
" amount of warrant No. 2646, on Treasurer, dated Aug. 16th, 1845			56,000 00
	Dollars	†332,368 21	
		*333,768 82	

C'R.

			†$23,499 79
By payments to inspectors, &c., to September 30th, 1845			*23,472 31
" payment to deputy collector at Natchitoches to September 30th, 1845			465 00
" contingent expenses paid to September 30th, 1845			277 73
" disbursements to the revenue-cutter Woodbury to September 30th, 1845			3,793 98
" disbursements for the revenue steamer Geo. M. Bibb to September 30th, 1845			71 93
" disbursements for the revenue-cutter Vigilant to September 30th, 1845			51 16
" disbursements for the revenue boats to September 30th, 1845			2,512 61
" postage paid on public letters to September 30th, 1845			51 33
" disbursements in relation to appraisements to September 30th, 1845			1,161 70
68 By fines, &c., costs of suits paid to September 30th, 1845			1,023 38
" debentures paid on merchandise exported to September 30th, 1845			92,776 27
" duties on merchandise refunded to correct errors to September 30th, 1845			30 92
" amount paid for extra clerk-hire in office of naval officer			368 00
" balance of public store account to September 30th, 1845			1,670 68
" amount paid the following collectors of the customs, per order of the Comptroller of the Treasury, with which they have been respectively debited, viz:			
A. W. Walker, S't Augustine, order June 6th, 1845, debited per report 5863			1,100 00
Robert Mitchell, collector, Pensacola, order July 15th 1845, debited per report No. 5972			1,500 00
Willis H. Arnold, collector, Pearl River, order July 26th, 1845, debited per report 6094			154 84
John D. Elliott, collector, Natchez, order August 28th, 1845, debit per report 5987			30 00
" twenty-two days' salary to late naval officer to July 22d, 1845	15 07		
" twenty days' salary to naval officer to September 30th, 1845	47 43		
" three months' salary to surveyor of New Orleans to September 30th, 1845	62 50		
69 By three months' salary to surveyor of Port Pontchartrain to September 30th, 1845	62 50		
" three months' salary to surveyor of Bayou S't John to September 30th, 1845	62 50		
" twelve months' salary to surveyor of La Fayette to September 30th, 1845	250 00		
			500 00
" amount of warrant No. 3640 in favor of the Treasurer, dated August 2, 1845	6,950 00		
' amount of warrant No. 3656 in favor of the Treasurer, dated August 15th, 1845	20,036 07		
" amount of warrant No. 3657 in favor of the Treasurer, dated August 30th, 1845	4,059 63		
' amount of warrant No. 3750 in favor of the Treasurer, dated September 30th, 1845	3,223 66		
" amount of warrant No. 3751 in favor of the Treasurer, dated Sept. 30th, 1845	7,496 15		
" amount of warrant No. 3752 in favor of the Treasurer, dated Sept. 30th, 1845	5,205 46		

*Erased. †Interlined in red.

" amount of warrant No. 3774 in favor of the Treasurer, dated Sept. 30th, 1845		50,000 00		
			97,570 52	
" commissions on dollars, †173,622 61 / *173,125 14, at one per cent			†1,736 24 / *1,731 25	
Balance due the United States			†102,021 68 / *103,919 76	
		Dollars	†332,368 21 / *333,768 82	
70 The balance due the United States per his account, ending Sept. 30th, 1855, is				126,407 87
Add amount overcharged to inspectors, &c., 3d q'r, 1844:				
" overpaid S. Boyd, weigher, his fees for weighing, $440 61; charged $951 62		511 01		
" amount overcharged for contingent expenses 3d q'r 1844:				
" amount paid subscription to the daily morning Herald disallowed		5 00		
" amount paid subscription to N. Orleans Commercial Bulletin, disallowed		12 00		
" amount charged for payment to G. W. Lewis as inspector at Natchitoches—a bill receipted by Lewis himself, and verified, is required		822 00		
" amount of R. Condon's bill, keeping a horse for captain of night-watch, disallowed		15 00		
" amount charged Balie Payton—district attorney's bill for fees, No. 5	$459 00			
And bill of fees No. 7, judge's certificate wanting	255 00			
		714 00		
" amount overcharged to public store account, 3d q'r 1844, particularized in statement of account for said quarter		384 89		
" amount overcharged for payments to inspectors, &c.,				
71 4th q'r 1844, as particularized in former statements		2,246 72		
" amount overpaid revenue boatmen 4th q'r 1844, added $10 per month to their wages, without authority		73 55		
Carried over		$4,784 17	$126,407 87	
Amount brought over		$4,784 17	$126,407 89	
Add amount overcharged for contingent expenses 4th q'r 1844:				
Paid R. Condon for keeping a horse for captain of night-watch, disallowed	$45 00			
" paid J. J. Langdon as inspector; this bill must be verified	255 00			
Paid M'r Swinburn discharging coal, disallowed; to be paid by contractor	50 00			
Paid A. McDonald piloting coal-barge, disallowed; to be paid by contractor	24 00			
Paid David Hayden travelling expenses to Washington, disallowed	150 00			
		524 00		
" disbursements for revenue-cutter Vigilant, 4th q'r 1844, overcharged amount of half bbl. beef charged in L. P. Halley's & Co. bill, disallowed		5 50		
" overcharged to public store account, 4th q'r 1844:				
" store-keeper and deputy store-keeper's pay increased without authority		191 00		
" am't charged for Treasurer's draft, 4th q'r 1844, will be placed to his credit next account		10 55		
72 Add amount charged for payments on account of new marine hospital 4th q'r 1844, not covered by warrant.		100 00		
" amount charged for payment on account of G. Dorsey, late collector; must settle it themselves		3 80		
" amount overcharged to public store account 1st q'r 1845, as particularized in last statement		552 16		

*Erased. †Interlined in red.

	overcharged for payments to inspectors, &c., 1st q'r 1845, as particularized in last statement		{ †2,409 00 *2,879 59	
	amount overcharged for contingent expenses, 1st q'r 1845, as particularized in last statement		485 00	
"	disbursements revenue-cutter Woodbury 1st quarter, 1845, overcharged:			
"	paid E. Laughlin, ward-room cook, January, February, & March, per pay-roll, disallowed; not authorized	$72 85		
	Paid H. D. Pierce, sheriff, for maintainance of a deserter; not authorized	62 00		
			134 85	
"	amount short credited for fines, &c.; the collector has not credited the United States with the moiety of case No. 6186, 1 box No. 1, B, 11,000 cigars		124 46	
	[†Allowed under act of the Secretary of the Treasury, dated 31st August, 1841.]			
"	Amount paid W. P. Reyburn, deputy collector Natchitoches, salary 1st q'r 1845, $375 and office-rent, $90,			
73	payable out of official emoluments		*465 00	
	" am't paid John Boyce, deputy collector, Shreveport, 15th January to March 31, 1845, (†suspended,) (* payable out of officialemoluments)		319 86	
"	amount paid on account of G. Dorsey, late collector; must settle it themselves		4 80	
"	amount paid for stationary for deputy surveyor and payable out of official emoluments)		534 25	
"	amount charged for Treasury note, 1st quarter, 1845, will be placed to his credit by warrant in next statement		50 00	
"	amount overpaid for payments to inspectors, &c., 2nd quarter, 1845, as particularized in last statement		{ †4,821 45 *4,942 97	
"	amount overcharged to contingent expenses, 2nd quarter, 1845; amount paid Jeffersonian Republican for advertising unclaimed goods, payable out of proceeds		348 00	
	Carried forward		{ †$15,402 85 * 16,459 96 }	$126,407 87
	Amount brought over		{ †$15,402 85 * 16,459,96 }	$126,407 87
	Add amount overpaid on account of revenue-boat R. J. Walker, being more than the sum authorized to be expended; I. Pennoyer's bill $138.04, and A. Latham's bill $6.00		144 04	
74	Add amount paid R. Coudon for keeping a horse for captain of night inspectors, disallowed		45 00	
"	amount paid for mileage to Ed. Faures $25, and Cha's Perrault $25, as river inspectors, who do not appear to have been authorized by the Secretary.		50 00	
"	amount overpaid A. S. Withers, late inspector at Shreveport, 7 months 23 days, $20 per month; charged $159.33 instead of $154.84		4 49	
"	amount overissued and overpaid debenture No. 420, Barber Brothers & Co., April 25, 1845	$100 00		
"	amount overissued and overpaid debenture No. 638, M. Doyle, June 12th, 1845	95		
			100 95	
"	disbursements revenue-cutter Woodbury overcharged, 2d q'r, 1845; amount paid E. Laughlin, ward-room cook, April, May, & June, 1845, not authorized by the Secretary of the Treasury	76 55		
"	commissions on cutter Woodbury's disbursements.	1 04		
			77 59	

* Erased. † Interlined in red.

"	amount overcharged to public-store account, 2d q'r, 1845: amount paid Brander, Williams & Co. for 2 half-pipes brandy stored by them and delivered to other persons under false pretenses, disallowed	322 00		
"	amount overpaid W. H. Wilder, store-keeper; no authority for raising his pay	102 00		
"	amount overpaid F. Ducayet, deputy store-keeper, for raising his pay	91 00		
	Disallowed in store-keeper's account paid deputy store-keeper; difference of salary	27 00		
	Paid J. Flint for gin alleged to have been lost out of 1 pipe in custom-house	57 80	599 80	
	[† Allowed under act of the Secretary of the Treasury, dated 31st Aug., 1841.]			
"	amount paid W. P. Reyburn, deputy collector, Natch'toches, salary 2d q'r, 1845, $375, & office-rent $90, payable out of official emoluments		* 465 00	
"	amount paid John Boyce, deputy collector, Shreveport, salary 2d q'r, 1845, payable out of official emoluments		375 00	
"	amount charged for surveyor's office-expenses, 2d q'r, 1845, payable out of his official emoluments		540 35	
"	amount charged for expenses of naval office, 2d q'r, 1845, payable out of his official emoluments		375 00	
"	amount charged on account of new marine hospital, more than covered by warrant No. 3656		137 00	
"	amount charged for Treasury notes, 2d q'r, 1845, more than covered by warrant		435 98	
"	amount overcharged for disbursements revenue-boats; paid C. Latham and D. Fisher for work at English turn 11½ days @ $1; disallowed		23 00	
"	amount overcharged for payments to inspectors, &c., 3d quarter, 1845:			
	Charged for payment to G. O. Forbes, inspector; no voucher	276 00		
	Overpaid Tho's K. Handy, inspector; absent, 84 days; disallowed	252 00		
	Overpaid J. Pennoyer, captain night inspectors; absent 35 nights; disallowed	105 00		
"	amount charged for payment to F. Barney, night inspector; no voucher	93 00		
"	amount paid J. Lane, watchman; disallowed; not authorized by the Secretary	162 00		
"	amount overpaid N. C. Snethen, marker;			
	*amount charged $725 46			
	[* Fees marking spirits, W. & Cords,] $199.00 *$526 46			
	[† Fees earned being $226.48,] diff † 498 98			
			† 1,386 98	
			* 1,414 46	
	Carrried forward		† $20,698 03 / * $22,247 62	$126,407 87
77	Amount brought over		† $20,698 03 / * $22,247 62	$126,407 87
Add	amount overcharged to contingent expenses:			
	M. M. Cohen's bill of costs of suits; errors in addition	50		
	S. W. Downs' bill, dis't att'y, cost of suit; judge's certificate wanting	17 00		
	Paid R. Coudon, keeping horse for captain night-watch; disallowed	15 00		
	Paid T. G. Chase, horse-hire; disallowed	34 35		
			66 85	
Add	disbursements on account of revenue-boat Sabine Pass; disallowed, the expenditures not being authorized by the Treasury		282 21	

* Erased. † Interlined in red.

	[† Allowed under act of the Secretary of the Treasury, dated 31st August, 1841.]			
	Amount paid deputy collector, Natchitoches, salary, $375, 3d q'r, 1845, and office-rent, $90; payable out of official emoluments		* 465 00	
	Amount overcharged for disbursements, revenue-cutter Woodbury, 3d q'r, 1845:			
	Charged for payment Capt. Winslow Foster; August pay-roll not receipted	100 00		
78	Charged for payment John B. Miley, master-at-arms; August pay-rolls not receipted	10 92		
	Charged for payment Capt. Winslow Foster; September pay-roll not receipted	100 00		
	Charged for payment to John Frances, cabin-steward; September pay-roll not receipted	25 50		
	Charged for payment to N. Hubbard, boy; Sept. pay-roll not receipted	10 70		
	Charged in T. W. Hithcock, j'r's bill, Galveston, for beef and vegetables; disallowed	30 93		
	Amount of Shaw & Co.'s bill of beef and vegetables; disallowed	49 28		
	Amount of Thomas P. Anderson's bill for medical attendance; disallowed	17 00		
	Commissions on disbursements revenue-cutter Woodbury; overch'g'd	1 32		
			345 65	
	Add amount overcharged for balance of public-store account, 3d q'r, 1845:			
	Amount overpaid F. Ducayet for salary	$92 00		
	Amount charged as payment to store-keeper to pay drayage; not a charge against the United States, as the store-keeper charges the drayage in his abstracts of stores	180 00		
79	Amount charged in storage-abstract, paid deputy; difference of salary disallowed	27 00		
			299 00	
	" amount charged for office-expenses of naval office, payable out of naval officer's official emoluments		330 07	
	Amount charged for office-expenses of surveyor's office, payable out of surveyor's official emoluments		407 79	
	" am't charged for payments on account of new marine hospital, not yet covered by warrant		196 45	
	" am't charged for Treasury notes, not yet covered by warrant		1,403 00	
	Commissions overcharged per last statement	† 151 06 *$165 06		
	Commissions overcharged in ac't now stated	† 87 95 * 92 94		
			† 239 01 * 258 00	
				† 24,268 06 * 26,301 64
				$150,675 93
	Carried over			* 152,709 51
				* 152,709 51
	Amount brought over			† 150,675 93
	Deduct amount credited 3d q'r 1844, for moneys received on account of G. Dorsey, late collector; a matter to be settled between them		51 08	
	" marine-hospital disbursements, 3d q'r 1844; not charged by collector		4,691 45	
	" marine-hospital disbursements, 4th q'r 1844, not charged by collector		5,679 99	

* Erased. † Interlined in red.

80 "	marine-hospital disbursements 1st q'r 1845; not charged by collector	17,782 33	
"	marine-hospital disbursements, 2nd q'r 1845; not charged by collector	4,659 63	
"	light-house disbursements, 3rd q'r 1844; not charged by collector	3,223 66	
"	light-house disbursements, 4th 1844; not charged by collector	7,496 15	
"	light-house disbursements, 1st 1845; not charged by collector	5,205 46	
			48,789 75
			*$103,919 76
			†101,886 18
Add am't suspended in last statement by Comptroller			135 50
			$102,021 68

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE, *July*, 1846.

JAMES M. TORBET.

COMPTROLLER'S OFFICE, 31*st August*, 1846.

J. BARTRAM NORTH.

No. 6423.]

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE, *August* 17*th*, 1846.

I have examined and adjusted the accounts of Thomas Barrett, late collector of the customs for the district of New Orleans, in the State of Louisiana, under his bond dated
81 6th July, 1844, and find that he is chargeable with the following sums, viz:

To balance of his account ending 30th September, 1845, per report No. 6391		103,919 76
" duties on merchandise from 1st to 12th October, 1845		41,303 49
" duties on tonnage from 1st to 12th October, 1845		264 34
" light-house money collected from 1st to 12th October, 1845		264 34
" interest received from 1st to 12th October, 1845		365 38
" marine-hospital money collected from 1st to 12th October, 1845	168 75	
Deduct commission thereon @ one per cent	1 69	
		167 06
	Dollars,	146,284 37

I also find that he is entitled to the following credits, viz:

By payments to inspectors, &c., from 1st to 12th October, 1845		36 12
" contingent expenses paid from 1st to 12th October, 1845		78 30
" postage on public letters paid from 1st to 12th October, 1845		1 63
" disbursements for revenue-boats from 1st to 12th October, 1845		25 80
" disbursements in relation to appraisements from 1st to 12th October, 1845		2 00
" debentures paid on merchandise exported from 1st to 12th October, 1845		2,946 91
" balance of public-store account from 1st to 12th October, 1845		4 00
82 By amount of the following warrants in favor of the Treasurer of the United States:		
No. 15, (L. H.,) dated 11th October, 1845	3,385 44	
" 3814, (Tr. notes int.,) dated 17th October, 1845	1,312 53	
No. 3823, (Tr. notes,) dated 25th November, 1845	1,300 00	
No. 3896, (M. H.,) dated 31st December, 1845	3,666 55	
No. 3942, (deposit,) dated 31st December, 1845	48,000 00	
No. 3965, (draft.) dated 31st December, 1845	10 55	
No. 3967, (L. H.,) dated 7th January, 1846	3,233 94	
No. 3971, (Tr. notes int.,) dated 28th January, 1846	259 00	
No. 3978, (Tr. notes,) dated 25th February, 1846	50 00	
		61,238 01
" amount paid Martin Duraldie, late naval officer, and with which said Duraldie has been debited, per report No. 6395		375 00
" commissions on *dollars* $65,192.63, @ one per cent		651 92
And that the balance due to the United States on the thirteenth day of October, 1845, amounted to—cash on hand—to		80,924 68
	Dollars,	146,284 37

* Erased. † Interlined in red.

83 As will appear from the statement and accounts herewith transmitted for the decision of the Comptroller of the Treasury thereon.

W'M COLLINS,
First Auditor.

To JAMES MCCULLOCH,
First Comptroller of the Treasury.

Auditor's balance brought over	$80,924 68
Deduct amount of net difference to his credit as per correct'd statement herewith	1,898 08
Dollars,	79,026 60

COMPTROLLER'S OFFICE.

Admitted and certified to the above as corrected, 5th day of September, 1846.

J. W. MCCULLOCH,
Comptroller.

To R. H. GILLETT, Esq.,
Register.

Thomas Barrett, late collector, under his bond dated 6th July, 1844, in account with the United States.

D'R.

To balance of his account ending 30th September, 1845, per report No. 6391.		†$102,021 08 *103,919 76
" duties on merchandise from 1st to 12th October, 1845		41,303 49
" duties on tonnage from 1st to 12th October, 1845		264 34
" light-house money collected from 1st to 12th October, 1845		264 34
84 To interest received from 1st to 12th October, 1845		365 38
" marine-hospital money collected from 1st to 12th October, 1845	168 75	
Deduct commission thereon @ one per cent	1 69	
		167 06
Dollars,		†144,386 29 *146,284 37

C'R.

By payments to inspectors, &c., from 1st to 12th October, 1845		$36 12
" contingent expenses paid from 1st to 12th October, 1845		78 30
" postage on public letters paid from 1st to 12th October, 1845		1 63
" disbursements for revenue-boats from 1st to 12th October, 1845		25 80
" disbursements in relation to appraisements from 1st to 12th October, 1845.		2 00
" debentures paid on merchandise exported from 1st to 12th October, 1845..		2,946 91
" balance of public-store account from 1st to 12th October, 1845		4 00
" amount of the following warrants in favor of the Treasurer of the United States:		
No. 15, (L. H.,) dated October 11th, 1845	3,385 44	
No. 3814, (Tr. notes & int.,) dated October 17th, 1845	1,332 53	
No. 3823, (Tr. notes,) dated November 25th, 1845	1,300 00	
No. 3896, (M. H., 3d q'r 1845,) dated December 31st, 1845..	3,666 55	
85 By—		
No. 3942, (deposit,) dated December 31st, 1845	48,000 00	
No. 3965, (draft,) dated December 31st, 1845	10 55	
No. 3967, (L. H. 3d q'r, 1845,) dated January 7th, 1846	3,233 94	
No. 3971, (tr. notes & int.,) dated January 7th, 1846	259 00	
No. 3978, (tr. notes,) dated February 25th, 1846	50 00	
		61,238 01
" amount paid Martin Duralde, late naval officer, and with which said Duralde has been debited per report, No. 6395		375 00

* Erased. † Interlined in red.

"	commissions of dollars †65,192 63, *65,192 63, @ one per cent			651 92
	Balance due to the United States in cash on hand			†79,026 60 *80,924 68
			Dollars	†144,386 29 *146,284 37
	The balance due to the United States per his account ending 12th October, 1845			36,815 86
Add:	Amount overcharged for payments to inspectors, &c., 3d q'r, 1844, viz:			
	Overpaid S. Boyd, weigher, his fees for weighing, $440.61, charged 951.62, difference		511 01	
	Paid subscription to Daily Morning Herald; disallowed	5 00		
	Paid subscription to N. Orleans Com'l Bulletin; disallowed	12 00		
			17 00	
"	Amount paid G. W. Lewis, inspector at Natchitoches, 3d q'r, 1844, suspended; a bill re-			
86	ceipted by Lewis himself, and duly verified, is required		822,00	
"	Amount of R. Condon's bill for keeping a horse for captain of night inspectors, 3d q'r, 1844; disallowed		15 00	
"	Amount charged for district attorney's (Balie Peyton's) bill of fees suspended, the judge's certificate wanting, { No. 5, 459.00 / No. 17, 255.00 }		714 00	
"	Amount overcharged to public store account, 3d q'r, 1844, viz:			
	Overpaid W. H. Wilder, store-keeper, from 25th July to 30th September, 1844; authority wanted for increase of his pay	74 23		
	Extra pay to J. E. Quere, late storekeeper; disallowed	113 66		
	Extra pay to E. Wiltz, deputy storekeeper; disallowed	93 00		
	Overpaid E. Wiltz, deputy storekeeper, for 3d q'r, 1844	92 00		
	Paid subscription to Louisiana Courier; disallowed	12 00		
			384 89	
	Am't overcharged for payments to inspectors, &c., 4th q'r, 1844, viz:			
	Overpaid to C. Hurst, inspector, absent 19 days, @ $3.00	57 00		
	Overpaid to O. B. Bradfute, inspector, absent 24 days, @ $3.00	72 00		
87	Overpaid to L. E. Collins, inspector, absent 16 days, @ $3.00	48 00		
	Am't paid the following persons as inspectors, not authorized as such by the Secretary of the Treasury, viz:			
	Paid P. E. Cruzat $171, C. E. Perrault, $183	354 00		
	Paid A. J. Fallon, as night inspector, $276, W. Silk, $258	534 00		
	Paid Jno. Dallman, $195, F. Barnes, j'r, $111, M. Monaghan, $93	399 00		
	Paid E. Faures, as inspector, removed 29th August, 1844; disallowed	183 00		
	Overpaid S. Boyd, weigher, his fees per abstract, amounting to $1,012.67	599 72		
			2,246 72	
	Am't overpaid revenue boatman, 4th q'r, 1844, $10 per month, added to their wages without authority		73 55	

*Erased. †Interlined in red.

	Contingent expenses, 4th q'r, 1844, overcharged, viz:			
	Paid R. Condon for keeping a horse for captain of night inspectors, disallowed	45 00		
	Paid J. J. Langdon, as inspector; the bill must be verified	255 00		
	Paid M. Swinburn for discharging coal, disallowed; he should have been paid by contractor.	50 00		
88	Add: Paid A. McDonald for piloting coal-barge, disallowed; should have been paid by contractor	24 00		
	Paid David Hayden for travelling expenses to Washington, supended	150 00		
			524 00	
	Carried forward		$5,308 17	$36,815 86
	Amount brought over		$5,308 17	$36,815 86
	" disbursements for revenue-cutter Vigilant, 4th q'r, 1844, overcharged:			
	Paid for half-barrel of beef, charged in S. & K. Halley & Co.'s bill, disallowed		5 50	
	" am't overcharged to public store account, 4th q'r, 1844, viz:			
	Pay of storekeeper & deputy storekeeper increased without authority		191 00	
	" am't charged for payment on account of the Marine Hospital, [*not covered by warrant,] [a separate account for which will be stated & the amount brought to his credit in next statement]		100 00	
	" am't charged for payment on account G. Dorsey, late collector; to be settled between themselves		3 0	
	" amount overcharged public store account, 1 q'r, 1845, viz:			
	Paid E. Wiltz, deputy storekeeper, as "difference of salary, 4th q'r, 1844;" disallowed	$50 00		
	Paid subscription to newspaper; disallowed	5 00		
89	Add:			
	Paid deputy store-keeper as difference of salary, 1 q'r, 1845, disallowed. No voucher or name	23 00		
	Paid W. H. Wilder, store-keeper, (pay increased without authority)	105 00		
	Paid W. S. McColloch; disallowed, as Wilder has been paid for the same time, and only one storekeeper can be allowed	279 16		
	Overpaid E. Wiltz, late deputy store-keeper, his compensation being only †2 per day	36 00		
	Overpaid F. Ducayet, deputy-store-keeper, his compensation being only $2 per day	54 00	552 16	
	Am't overcharged for payments to inspectors, &c., 1st q'r, 1845, viz:			
	Paid J. J. Langdon, inspector, 15 days' absent; disallowed	45 00		
	Paid the following persons as inspectors, not authorized as such by the Secretary of the Treasury, viz:			
	Benjamin Williams, $270.00.			
	Jos. Genois, $30, A. M. Dupern, $48	357 00		
	C. S. Hayden, $72, P. E. Crozat, $270, P. Bayley, $42, H. F. Cantzon, $42	426 00		
	J. J. Nicholson, $42, H. Campbell, $30, F. Thomas, $39, G. V. H. Forbes, $30	150 00		
90	M. F. Neville, $42, E. Frures, (removed August, 1844,) $270. C. Perrault, $270	582 00		
	Paid night-inspectors, A. J. Fallon, $270, W'm Silk, $270, Jno. Dallman, $270	810 00		
	Paid J. P. Ross	39 00		
	Overpaid N. C. Snethen, for marking spirits, cordials, wines	*470 59	†2,409 00	
	*Allowed in pursuance of Comptroller's circular, 8th November, 1841		*2,879 59	

*Erased. †Interlined in red.

	Contingent expenses 1st q'r, 1845; overcharged, viz:			
	Paid David Hayden for desks and chairs; payable out of official emoluments	30 00		
	Paid J. Miller for piloting coal-barges; the coal was to be delivered by the contractor	30 00		
	Paid J. C. Johnson's bill for searching for sch'r Vigilant; disallowed; not authorized, viz: Bill No. 4, $66; bill No. 5, $222	288 00		
	Paid M. Swinburn's bill for transportation and delivery, (coal boats; the coal was to be delivered free of expense by the contractor)	102 00		
91	Paid R. Condon's bill for keeping a horse for captain of night-inspectors; disallowed	45 00	485 00	
	Amount carried forward over		†9,054 63 *$9,525 22	$36,815 86
	Amount brought over		†9,054 63 *$9,525 22	$36,815 86
	Add disbursements for revenue-cutter Woodbury; overcharged 1st q'r 1845.			
	Paid E. McLaughlin, wardroom cook, January, February, and March, per pay-roll; disallowed; not authorized by the Secretary of the Treasury	72 85		
	Paid H. D. Peire, sheriff, for maintenance of a deserter; disallowed; not authorized	62 00		
			134 85	
	Am't short, credited for fines, &c. The collector has not credited the U. States with their moiety in case No. 6186, box No. 1—11,000 segars.		124 46	
	Allowed in 2d q'r, under act of the Secretary of the Treasury, 31st Aug., 1841:			
	Am't paid W. P. Reyburn, deputy collector of Natchitoches; salary 1st q'r 1845, $375; office rent, $90; payable out of official emoluments		*465 00	
	[†Allowed in 2d q'r under act of the Secretary of the Treasury, 31 Aug., 1841.]			
92	Paid John Boyce, deputy collector at Shreveport, for salary, 1st q'r, 1845; suspended for explanation, his per diem allowance being $3, as inspector, under act of the Secretary of the Treasury, dated 23d Aug., 1844.		†319 86	
	Paid John Boyce, deputy collector at Shreveport, from 15th January to 31st March, 1845, payable out of official emoluments		*319 86	
	Paid on account of G. Dorsey, late collector, 1st q'r 1845, to be settled between themselves		480	
	Paid for stationery for deputy surveyor, 1st q'r, 1845; payable out of surveyor' official emoluments		534 25	
	Add amounts overcharged for payments to inspectors, &c., 2nd q'r 1845:			
	Paid P. Maspero, 2 days' absent on leave; disallowed	6 00		
	Paid L. A. Beaucord, no voucher, $273; J. S. Harris, no voucher, 273	546 00		
	Paid the following persons as inspectors, not authorized as such by the Secretary of the Treasury, viz:			
	P. E. Crozat, $273; A. M. Dupern, $273; P. Bayley, $273; M. L. Neville, $273	1,092 00		
	J. J. Nicholson, $273; Jos. Genois, $273; G. N. Forbes, $273; B. Williams, $297	1,116 00		
	Paid river inspectors, viz: E. Faures, $273; C. Perrault, $273	546 00		
93	Paid night inspectors, viz: A. J. Fallon, $273; W'm Silk, $273	546 00		

*Erased. †Interlined in red.

Paid night inspectors, viz: J. Dallman, $273, J. P. Ross, $273	546 00		
Amount overpaid N. C. Snethen, marking wines, spirits, & cordials, &c., †$399.60, this q'r, amounts to *278.15	†423 45 *544 97	†4,821 45 *4,942 97	
[†Difference allowed under Comptroller's circular, 8th November, 1841.]			
Contingent expenses overcharged, 2d q'r 1845, viz: Paid Jeffersonian Republican for advertising unclaimed goods; should be paid out of proceeds of sale	348 00		
Paid bill of J. Pennoyer, $138.04, and bill of W. Latham, $6.00, on account of revenue-boat R. J. Walker, being more than the sum authorized to be expended for said boat, disallowed	144 04		
Paid R. Condon, for keeping a horse for captain of night inspectors, disallowed	45 00		
		†14,994 30	
Carried over	$537 04	*16,051 41	$36,815 86
		†14,994 30	
Amount brought forward	$537 04	*16,051 41	$36,815 86
94 Add paid for mileage to the following persons, as river inspectors, who did not appear to have been authorized as such by the Secretary of the Treasury, viz: Ed. Faures, $25, Ch. Perault, $25	50 00		
Overpaid A. S. Withers, late inspector at Shreveport, 7 months & 23 days, @ $20 per month; charged $159.33, instead of 154.84; diff.	4 49		
		591 53	
Overcharged debentures paid 2d q'r 1845, viz: Overissued & overpaid debenture No. 420, Barbour, Smith & Co., April 25th, 1845	100 00		
Overissued & overpaid debenture No. 638, M. Doyle, June 12th, 1845	95		
		100 95	
" Disbursements for revenue-cutter Woodbury, overcharged 2nd q'r 1845, viz: Paid E. Laughlin, wardroom cook, April, May, & June, 1845, not authorized by the Secretary of the Treasury, disallowed	76 55		
Overcharged for commissions for disbursements for cutter Woodbury	1 04		
		77 59	
" Am't overcharged to public-store account, 2d q'r 1845, viz:			
95 Paid Brander, Williams & Co., for 2 half-pipes brandy stored by them and delivered to other persons under false pretences, disallowed	322 00		
Paid W. H. Wilder, store-keeper, at the rate of $1,500 per annum, instead of $3.00 per day; no authority for raising his pay	102 60		
Paid F. Ducayet, deputy store-keeper, @ $3.00 instead of $2.00 per day; diff.	91 00		
" Amount disallowed in store-keeper's account, viz: Paid F. Ducayet, deputy store-keeper, difference of salary; no voucher	27 00		
" Paid J. Flint for gin alleged to have been lost out of one pipe in custom house	57 80		
		599 80	
" Amount paid to W. P. Reyburn, deputy collector at Natchitoches, salary for 2d q'r 1845, $375; office rent, $90, payable out of official emoluments. [†2d q'r allowed under act of Secretary of the Treasury, 31 Aug, 1841.]		*465 00	

*Erased. †Interlined in red.

	(Amount paid to John Boyce, deputy collecter at Shreveport, for salary, 2d q'r 1845, suspended for explanation, his per diem allowed being $3.00, as inspector)		†375 00	
96	" Amount paid to John Boyce, deputy collector at Shreveport, salary, 2d q'r 1845 payable out of official emoluments		*375 00	
	" Amount charged for surveyor's office expenses, 2d q'r 1845; pay out of his official emoluments		540 35	
	" Amount charged for new marine hospital, 2d q'r 1845, more than covered by warrant No. 3656		137 00	
	" Amount charged for Treasury notes, 2d q'r 1845, more than covered by warrant, being the amount of stolen note & interest thereon		103 45	
	Revenue-boat disbursements, 2d q'r 1845, overcharged, viz: Paid C. Latham & D. Fisher for work at English Turn, 11½ days each, @ $1.00, not authorized. Disallowed		23 00	
	Carried over		†$16,542 97 *$19,065 08	$36,815 86
	Amount brought over		†$16,542 97 *$19,065 08	$36,815 86
	Add payment to inspectors, &c., 3d quarter 1845: Paid G. V. Forbes, inspector—no voucher—$276; T. K. Handy, 84 days absent, disallowed $252	528 90		
	Paid H. Pennoyer, capt. night inspectors, absent 35 nights	105 00		
97	Add: Paid F. Barney, night-inspector, no voucher	93 00		
	Paid J. Lane, watchman, disallowed, not authorized by Secretary of the Treasury	162 00		
	Overpaid N. Snethen, marker; am't charged $725 46 †226 48			
	Am't of fees for marking spirits, wines, & cordials *190 00	†498 98 *526 46	†1,386 98 *1,415 46	
	Contingent expenses, 3d q'r 1845, overcharged: Overpaid M. M. Cohen, bill of costs of suit, bein' an error in addition	50		
	Paid S. W. Down's (district att'y) bill of costs of suit suspended for want of judge's certificate	17 00		
	Paid R. Condon for keeping a horse for captain of night-inspectors; disallowed	15 00		
	Paid T. J. Chase, horse-hire; disallowed	34 35	66 85	
	Disbursements for revenue-boat at Sabine Pass; disallowed, the expenditures not being authorized by the Secretary of the Treasury		282 21	
	[3d quarter allowed under act of Sec'y of the Treasury, 31st August, 1846]			
98	Amount paid deputy collector at Nachitoches, salary 3d quarter 1845, $375, & office-rent $90, payable out of official emoluments		*465 00	
	Disbursements for revenue-cutter Woodbury, 3d q'r 1845, suspended, viz:			
	Charged as paid Capt. W. Foster, pay-roll for Aug., $100, for Sept., $100; not receipted	$200 00		
	Charged as paid John B. Miley, master-at-arms, per pay-roll for August; not receipted	10 92		
	Charged as paid John Francis, cabin-steward, pay-roll for Sept.; not receipted	25 50		
	Charged as paid N. Hubbard, boy, September pay-roll; not receipted	10 70		

*Erased. †Interlined in red.

Paid T. W. Hitchcock's, j'r's, bill at Galveston, for beef & vegetables; disallowed	30 93		
Paid Shaw & Co.'s bill for beef and vegetables; disallowed	49 28		
Paid Thomas P. Anderson's bill for medical attendance; disallowed	17 00		
Commissions on disbursements for revenue-cutter Woodbury; overcharged	1 32		
		345 65	
99 Amount overcharged as balance of public-store account, 3d quarter 1845, viz:			
Overpaid F. Ducayet, deputy store-keeper, for salary	92 00		
Amount charged as payment to store-keeper to pay drayage, not a charge against the United States, as the store-keeper charges the drayage to his abstract of storage	180 00		
Amount charged in storage-abstract as paid deputy, "difference of salary;" disallowed	27 00		
		299 00	
Amount carried forward		†19,923 66 *$21,938 25	$36,815 86
Amount brought over		†19,923 66 *$21,938 25	$36,815 86
Add amount charged for office expenses of naval office, 3d q'r 1845, payable out of naval officer's official emoluments		330 07	
" amount charged for office expenses of surveyor's office, payable out of surveyor's official emoluments		407 79	
" amount charged for payment on account of new marine-hospital, not yet covered by warrant		196 45	
Payments to inspectors, &c., from 1st to 12th October, 1845, viz:			
100 Paid Ch's Perrault, as river inspector, said Perrault not appearing as such on the books of the Secretary of the Treasury		36 00	
Contingent expenses from 1st to 12th October, 1845, overcharged, viz:			
Paid Ch's Perrault for mileage as river inspector, disallowed, as said Perrault does not appear as such on the books of Secretary of the Treasury		5 00	
Revenue-boat's disbursements, overcharged from 1st to 12th October, 1845, viz:			
Paid F. Delarue and W'm Claiborne, boatmen, each $1 50 per day, for 13 days, instead of $30 per month, which is the allowance; difference		13 20	
Am't of the following sums charged for marine-hospital disbursements more than covered by warrants, being for seamen retained in the hospital beyond the time authorized, viz:			
3d quarter 1844	758 26		
4th do. do	996 87		
1st do. 1845	540 10		
3d do. do	356 78		
		2,652 01	
Deduct amount short, charged for marine-hospital disbursements 2d quarter 1845, being less than covered by warrant No. 3657	1,863 45		
		788 56	
101 Amount charged for light-house disbursements more than covered by warrants, being for sundry items suspended and disallowed for reasons given to him on adjustment of said accounts, viz:			

*Erased. †Interlined in red.

	3d quarter 1844	8 71			
	4th do. do	75 85			
	2d do. 1845	102 50			
			187 06		
Deduct:	Short charged for light-house disbursements, 3d quarter 1845, being less than covered by warrant No. 3967		151 29		
				35 77	
	Amount charged for Treasury notes from 1st July to 12th October, 1845, more than covered by warrants, being the amount of one note returned for proper endorsement			50 00	
	Amount charged for expenses of naval office from 1st to 12th October, 1845, payable out of naval officer's official emoluments			90 00	
	Amount charged in account now stated as balance of emoluments, from July 1st, 1844, to 12th October, 1845, suspended, as said accounts have not as yet been adjusted			19,540 25	
	Commissions overcharged, per last statement	†239 01 *258 00			
102	Commissions overcharged in acc't now stated	470 56		†709 57 *728 56	†42,146 32 *44,159 90
					*80,975 76 †78,942 18
	Deduct this sum credited by him in 3d q'r 1844, for moneys received on account of G. Dorsey, late collector, being a matter to be settled between them				51 08
					*80,924 68 Dollars †78,891 10

J. COLGATE.

FIRST AUDITOR'S OFFICE,
August 17, 1846.

Amount brought forward			$78,891 10
Add the following sums suspended in 1st quarter 1845, viz:			
" am't paid F. H. Whitemore, ass't measurer, charged in measurer's abstract, suspended for explanation. His receipt for January is signed by himself, and in the month of February he makes his mark	135 00		
" overpaid Valette & Thomas, in abstract of disbursements for revenue-cutter Woodbury, 8 lignumvita *dogs*, @ 12½c., charge $1.50 instead of $1.00, difference	50	135 50	
		Dollars	79,026 60

J. BARTRAM NORTH.

COMPTROLLER'S OFFICE, *5th August*, 1865.

No. 9241.] TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE, *May 17th*, 1848.

103 I have examined and adjusted the accounts of Thomas Barrett, late collector of the customs for the district of New Orleans, in the State of Louisiana, under his bond dated 6th July, 1844, and find that he is chargeable as follows, viz:

To balance of his account ending 12th October, 1845, per report No. 6423		79,026 60
	Dollars.	79,026 60

I also find that he is entitled to the following credits, viz:

By amount of the following payments, heretofore suspended, as per statement, viz:

Payments to inspectors	135 00	
Contingent expenses	390 84	
Revenue-boat disbursements	74 05	
Payments on acc't of public store	17 00	
Official expenses of naval officer and surveyor	1,902 46	
		2,519 35

* Erased. † Interlined in red.

By amount of warrant No. 4232, (M. H.,) in favor of the Treasurer, dated 30th September, 1846		90 90
" commissions on $2,636.61 @ one per cent		26 36
And that the balance due to the United States by the late collector amounts to		76,389 99
	Dollars.	79,026 60

As will appear from the statement and vouchers herewith for the decision of the Comptroller of the Treasury therein.

W. COLLINS,
First Auditor.

104 To JAMES W. McCULLOCH,
Comptroller of the Treasury.

COMPTROLLER'S OFFICE.

Admitted and certified to the above this 31st day of July, 1848.

J. W. McCULLOCH,
Comptroller.

To DANIEL GRAHAM, Esq.,
Register.

Thomas Barrett, late collector, under his bond, dated 6th July, 1844, in account with the United States.

D'R

To balance of his account ending 12th October, 1845, per report No. 6423	$79,026 60
	$79,026 60

C'R

By amount of the following payments heretofore suspended, as per abstract herewith, viz:			
Payments to inspectors, &c		$135 00	
Contingent expenses		390 84	
Revenue-boat disbursements		74 05	
Payments on account of public stores		17 00	
Official expenses of naval officer and surveyor		1,902 46	
			2,519 35
" amount of warrant No. 4232, (M. H.,) in favor of the Treasurer, dated 30th September, 1846			90 90
" commissions on dollars 2,636.61 @ one per cent			26 36
105 Balance due to the United States			76,389 99
		Dollars.	79,026 60
The balance due the United States per his account ending 12th October, 1845, is			$36,815 86
Add amount overpaid S. Boyd, weigher, 3d q'r, 1844, his fees for weighing, $440.61, charged $951.62; difference		511 01	
" amount paid G. W. Lewis, as inspector at Natchitoches, 3d q'r, 1844; suspended. A bill receipted by Lewis himself, & duly verified, is required		822 00	
" amount charged 3d q'r, 1844, for district attorney's (Balie Peyton) fees; suspended; the judge's certificate wanting.	No. 5... $459 00 No. 17.. 255 00	714 00	
" amount overcharged on account of public store, 3d q'r, 1844, viz:			
" overpaid W. H. Wilder, store keeper, from 25th July to 30th Sept., 1844. Authority wanted for increase of his pay	$74 23		
Extra pay to J. E. Quere, late store-keeper; disallowed	113 66		
Extra pay to E. Wiltz, deputy store-keeper; disallowed	93 00		
Overpaid E. Wiltz, deputy store-keeper, for 3d q'r, 1844	92 00	372 89	

"	payments to inspectors, 4th q'r, 1844, overcharged, viz:			
	To C. Hurst, inspector, absent,			
106	Add 19 days, @ $3.00	$57 00		
	To O. B. Broadfute, inspector, absent 24 days, @ $3.00	72 00		
	To L. E. Collins, inspector, absent 16 days, @ $3.00	48 00		
	Paid to the following persons as inspectors, who do not appear to have been authorized to act as such by the Secretary of the Treasury, viz:			
	To E. B. Crozat, $171; C. E. Perrault, $183	354 00		
	" A. J. Fallon, as night-inspector, $276.00; W'm Silk, $258.00	534 00		
	To John Dallman, $195.00; F. Barnes, j'r, $111.00; M. Monaghan, $93.00	399 00		
	To E. Faures, as inspector, removed August 29th, 1844, disall'd	183 00		
			1,647 00	
Add amount overpaid S. Boyd, weigher, 4th q'r, 1844, his fees, per abstract, amounting to $1,012.67			599 72	
"	Amount overcharged for contingent expenses, 4th q'r, 1844, viz:			
	Paid J. J. Langdon, as inspector; the bill not verified	255 00		
	Paid M. Swinburn for discharging coal; disallowed; he should have been paid by the contractor	50 00		
107	Paid A. McDonald for piloting coal-barge; disallowed; he should have been paid by the contractor	34 00		
			329 00	
Add overcharged on account of revenue-cutter Vigilant, 4th q'r, 1844, viz:				
	Paid for half barrel of beef, charged in S. & R. Halley & Co.'s bill; disallowed		5 50	
"	overcharged on account of public stores, 4th q'r, 1844, viz:			
	Pay of store-keeper and deputy store-keeper increased without authority		191 00	
"	amount charged as a payment on account of new marine hospital, for which a separate account will be stated and the account brought to his credit in a future settlement		100 00	
"	amount charged for payment on account of G. Dorsey, late collector, to be settled between themselves		3 80	
"	overcharged on account of public stores, 1st q'r, 1845, viz:			
	Paid E. Wiltz, deputy store-keeper, as difference of salary, 4th q'r, 1844; disallowed	50 00		
	Amount carried forward	$50 00	$5,295 92	$36,815 86
	Amount brought forward	50 00	5,295 92	$36,815 86
	Paid deputy store-keeper as difference of salary, 1st q'r, 1845; disallowed; no voucher or name	23 00		
108	Paid W. H. Wilder, store-keeper, (pay increased without authority)	105 00		
	Paid W. S. McCulloch, disallowed, as Wilder has been paid for the same time, and only one store-keeper can be allowed	279 16		
	Overpaid E. Wiltz, late deputy store-keeper, his compensation being $2.00 per day only	36 00		
	Overpaid F. Ducayet, deputy store-keeper, his compensation being $2.00 per day only	54 00		
			547 16	

	Amounts overcharged for payments to inspectors, &c., 1st q'r, 1845, as follows, viz:			
	Paid to the following persons as inspectors, who do not appear to have been authorized as such by the Secretary of the Treasury, viz:			
	Benjamin Williams, $270; P. E. Crozat, $270: A. M. Dupern, $48	588 00		
	C. S. Hayden, $72; Jos. Genois, $39; P. Bagley, $42; H. F. Cantzon, $42	195 00		
	J. J. Nicholson, $42; J. H. Campbell, $39; F. Thomas, $39; G. V. H. Forbes, $30	150 00		
	M. F. Neville, $42; E. Faures, (removed 29th Aug., 1844,) $270; C. Perrault, $270	582 00		
109	As night-inspectors, viz: A. J. Fallon, $270; W'm Silk, $270; John Dallman, $270	810 00		
	J. P. Ross	39 00		
	Paid J. J. Langdon, absent 15 days, @ $3.00 per day	45 00		
			2,409 00	
	Am't overcharged for contingent expenses 1st q'r 1845, as follows, viz:			
	Paid J. Miller, for piloting coal barges; the coal was to be delivered according to the contract	30 00		
	Paid J. C. Johnson's bills for searching for schooner Vigilant; disallowed, not authorized, viz: Bill No. 4, $66.00; bill No. 5, $222.00	288 00		
	Paid M. Swinburn bill for transportation and delivery of coal; disallowed, as the coal was by the contract to be delivered free of expense	102 00		
			420 00	
	Overcharged disbursements for revenue-cutter Woodbury, 1st q'r 1845, viz:			
	Paid E. M. Laughlin, as ward-room cook, for January, February, and March, per pay-roll; disallowed; not authorized by the Secretary of the Treasury.	$72 85		
110	Paid H. D. Piere, sheriff, for maintain'ce of a deserter; disallowed; not authorized	62 00		
			134 85	
	Amount short credited for fines, &c., the collector not having credited the United States with their moiety in case No. 6186, 1 box No. 1, 11,000 cigars		124 46	
	Amount paid John Boyce, deputy collector at Shreveport, for salary 1st q'r 1845, suspended for explanation, his per diem allowance being $3.00, as inspector under act of the Secretary of the Treasury, dated 23d August, 1844		319 86	
	Amount carried forward		$9,251 25	$36,815 86
	Amount brought forward		$9,251 25	$36,815 86
	Amount paid on account of G. Dorsey, late collector, 1st q'r, 1845, to be settled between themselves		4 80	
	Am't overcharged to inspectors, &c., 2d q'r 1845, as follows, viz:			
	Paid T. Maspero, 2 days absent, @ $3.00 per day	6 00		
	Paid L. A. Besancon, no voucher, $273.00; J. S. Harris, no voucher, $273.00	546 00		
111	Paid to the following persons, as inspectors, who do not appear to have been authorized to act as such by the Secretary of the Treasury, viz:			
	P. E. Crozat, $273.00; A. M. Duperne, $273.00; P. Bagley, $273.00	819 00		
	M. L. Neville, $273.00; J. J. Nicholson, $273.00; Jos. Genois, j'r, $273.00	819 00		
	G. N. Forbes, $273.00; B. Williams, $297.00	570 00		
	As river inspectors, viz:			
	Ed. Faures, $273.00; C. Perrault, $273.00	546 00		
	As night inspectors, viz:			
	A. J. Fallon, $273.00; W'm Silk, $273.00	546 00		

J. Dallman, $273.00; J. P. Ross, $273.00	546 00		
Am't paid N. C. Snethen, marker, (fees for marking wines, spirits, and cordials, this quarter, am't to $399.60)	423 45		
		4,821 45	
Amount overcharged for contingent expenses, 2d q'r 1845, viz:			
Paid bill of J. Pennoyer, $138.04, and bill of A. Latham, $6.00, on account of revenue-boat R. J. Walker, being more than the sum authorized to be expended for said boat	144 04		
Paid for mileage to the following persons, as river inspectors, who do not appear to have been authorized to act as such by the Secretary of the Treasury:			
Ed. Faures, $25.00; Ch. Terrault, $25.00	50 00		
		194 04	
Overcharged debentures paid, 2d quarter, 1845, viz:			
112 Overissued & overpaid debenture No. 420, Baber, Smith & Co., April 25th, 1845	100 00		
Over-issued & overpaid debenture No. 638, M. Doyle, June 12th, 1845	95		
		100 95	
Disbursements for revenue cutter Woodbury, overcharged, 2d q'r 1845, viz:			
Paid E. Laughlin, ward-room, for April, May, & June, 1845, not authorized by the Secretary of the Treasury.	76 55		
Overcharged commission on disbursements for cutter Woodbury	1 04		
		77 59	
Amount overcharged on acc't of public store, 2d q'r 1845, viz:			
Paid Brander, Williams & Co., for 2 half-pipes of brandy, store by them and delivered to other persons under false pretenses; disallowed	322 00		
Amount carried farward	$322 00	$14,450 08	$36,815 86
Paid W. H. Wilder, storekeeper, at the rate of $1,500 per annum instead of $3.00 per diem; no authority for raising his pay	102 00		
Paid F. Ducayet, deputy storekeeper, $3.00 instead of $2.00	91 00		
Paid F. Ducayet, storekeeper, for "difference of salary," no voucher	27 00		
113 Paid J. Flint for gin alleged to have been lost out of one pipe in custom-house	57 80		
		599 80	
Amount paid John Boyce, deputy collector at Shreveport, for salary, 2d q'r 1845; suspended for explanation, his per diem allowance being $3.00 as inspector		375 00	
Amount charged for new marine hospital, 2d q'r 1845, more than is covered by warrant No. 3656		137 00	
Amount charged for Treasury notes, 2d q'r. 1845, more than is covered by warrant, being the amount of a stolen note and interest thereon		103 45	
Overcharge for revenue-boat disbursements, 2d q'r 1845, viz:			
Paid C. Latham and D. Fisher for work done at English Turn, 11½ days each, at $1.00 per day; not authorized		23 00	
Payments to inspectors, &c., 3d q'r 1845, overcharged, viz:			
Paid G. V. Forbes, inspector, no voucher	276 00		
Paid T. K. Handy, 84 days absent, @ $3.00 per diem	252 00		
Paid I. Pennoyer, capt. of night inspectors, absent 35 nights	105 00		
Paid F. Barnes, night inspector, no voucher	93 00		
114 Paid J. Lane, watchman; disallowed; not authorized	162 00		

Overpaid N. C. Snethen, marker, am't charged	725 46			
Am't of fees for marking spirits, wines, & cordials	226 48			
		498 98		
			1,386 98	
Overcharged for contingent expenses, 3d q'r 1845, viz:				
Overpaid M. M. Cohen's bill of costs of suit, being an error in addition		50		
Paid S. W. Downs, (district attorney,) bill of costs of suit; suspended for want of judge's certificate		17 00		
			17 50	
Am't paid on account of revenue-boat at Sabine Pass; disallowed, the expenditure not having been authorized by the Secretary of the Treasury		282 21		
Am't charged on account of new marine hospital, 3d q r 1845	196 45			
Less this sum covered by warrant No. 4232, to his credit in the above statement	90 90			
		105 55		
Amount carried forward			$17,480 57	$36,815 86
Amount brought forward			$17,480 57	$36,815 86
Disbursements for revenue-cutter Woodbury, 3d q'r 1845, viz:				
Charged as paid Capt. W. Foster, per pay for August, $100; for September, $100; not receipted		200 00		
115 Charged as paid John B. Miley, master-at-arms, as per pay-roll for August; not receipted		10 92		
Charged as paid John Francis, cabin-steward, pay-roll for September; not receipted		25 50		
Charged as paid W. Hubbard, boy, pay-roll for September; not receipted		10 70		
Paid T. W. Hitchcock, j'r's, bill, at Galveston, for beef & vegetables; disallowed		30 93		
Paid Shaw & Co.'s bill for beef & vegetables; disallowed		49 28		
Paid Thomas P. Anderson's bill for medical attendance; disallowed		17 00		
Commissions on disbursements for revenue-cutter Woodbury, overcharged		1 32		
			345 65	
Overcharged on account of public store, 3d q'r 1845, viz:				
Overpaid F. Ducayet, deputy store-keeper for salary		92 00		
Amount charged as payment to storekeeper, to pay drayage, not a charge against the United States, as the storekeeper charges the drayage in his account of storage		180 00		
Amount charged in storage abstract as paid deputy for "difference of salary;" disallowed		27 00		
			299 00	
Overcharged payments to inspectors from 1st to 12th October, 1845, viz:				
Paid Charles Perrault, as river inspector, said Perrault not appearing as such on the books of the Secretary of the Treasury			36 00	
Contingent expenses overcharged from 1st to 12th October, 1845, viz:				
Paid Ch. Perrault for mileage, as river inspector, disallowed, said Perrault not appearing as such on the books of the Secretary of the Treasury			5 00	
Revenue-boat disbursements for 1st to 12th October, 1845, overcharged, viz:				
P. F. Delarue & William Clairborn, boatmen, each $1.50 per day for 13 days, instead of pay at the $30 per month, which is the allowance			13 20	

	Amount of the following sums charged for marine hospital disbursements more than covered by warrants, being for seamen retained in hospital beyond the limited time, viz:				
	3d quarter, 1844	758 26			
	4th do. 1844	996 87			
	1st do. 1845	540 10			
	3rd do. 1845	356 78			
			2,652 01		
117	Less short charged for marine hospital disbursements 2nd quarter, 1845, being less than covered by warrant No. 3,657		1,863 45		
				788 56	
	Amount carried forward			$18,967 98	$36,815 86
	Amount brought forward			$18,967 98	$36,815 86
	Amount charged for light-house disbursements, more than covered by warrants, being sundry items suspended and disallowed, for reasons given to him, on the adjustment of said account, viz:				
	3d quarter, 1844	$8 71			
	4th do. 1844	75 85			
	2d do. 1845	102 50			
			187 06		
	Less short charged for light-house disbursements 3d q'r, 1845, being less than is covered by warrant No. 3967		151 29		
				35 77	
	Amount charged for Treasury notes from 1st July to 12th October, 1845, more than covered by warrants, being the amount one note returned for proper endorsements			50 00	
	Amount charged as balance of emolument-account, from 1st July, 1844, to 12th October, 1845, amount not yet adjusted			19,540 25	
	Amount paid to Jeffersonian Republican, 2d q'r, 1845, for advertising unclaimed goods, it should be paid out of the proceeds of sale of said goods			348 00	
	Commissions overcharged, per last statement		709 57		
118	Less commissions allowed him in this statement		26 36		
				683 21	39,625 21
					$76,441 07
	Deduct this sum, credited by him in 3rd q'r, 1844, for moneys received on account of G. Dorsey, late collector, being a matter to be settled between them				51 08
				Dollars	76,389 99

FIRST AUDITOR'S OFFICE, *May 13th*, 1848.

J. COLEGATE.

COMPTROLLER'S OFFICE, *May 26th*, 1848.

J. BARTRAM NORTH.

No. 15817.]

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE,
May 29th, 1854.

I have examined and adjusted the accounts of Thomas Barrett, late collector of the customs for the district of New Orleans, in the State of Louisiana, under his official bond, dated 6th July, 1844, and find that he is chargeable as follows, viz:

To balance of his account, per report No. 9241		76,389 99
	Dollars	76,389 99

I also find that he is entitled to credit, as follows, by amount of the following sums
119 heretofore suspended, viz:

By payments to inspectors, &c.	$13,183 02	
By disbursements for revenue cutters	563 59	
" ditto " revenue boats	462 45	
" ditto on account of contingent expenses	897 00	
" disbursements on account of public warehouses	1,507 85	

" disbursements on account of costs of suit	731 00	
" disbursements on account of marine hospital	778 56	
		18,133 47
Balance of his account of official emoluments, from 1st July, 1844, to 12th October, 1845, as per report No. 6771		16,529 75
Commissions on dollars 35,013.35, @ one per cent		350 13
And that the balance due to the United States amounts to		41,376 64
	Dollars	76,389 99

As will appear from the statement, &c., herewith transmitted for the decision of the Commissioner of the Customs thereon.

T. L. SMITH, *Auditor.*

To HUGH J. ANDERSON,
Commissioner of Customs.

OFFICE OF COMMISSIONER OF CUSTOMS.

Admitted & certified to the above the 31st day of May, 1854.

H. J. ANDERSON,
Commissioner of Customs.

120 To F. BIGGER, *Register.*

Thomas Barrett, late collector of the customs for the district of New Orleans, Louisiana, balance account under his official bond, dated 6th July, 1844, in account with the United States.

D'R.

To balance of his account, per report No. 9241	$76,389 99
Dollars	76,389 99

C'R.

By amount of the following sums heretofore suspended, viz:	
Payments to inspectors, &c	$13,183 02
Disbursements for revenue cutters	563 59
Disbursements for revenue boats	462 45
Disbursements on account of contingent expenses	897 00
Disbursements on account of public warehouses	1,507 85
Disbursements on account of suit	731 00
Disbursements on account of marine hospital	788 56
	18,133 47
" balance of his account of official emoluments, from 1st July, 1844, to 12th October, 1845, as per report No. 6771	16,529 75
" commissions on dollars 35,013.35, at one per cent	350 13
Balance due the United States	41,376 64
Dollars	76,389 99

121

The balance due to the United States per his account ending 12th October, 1845, is			$36,815 86
Add amount charged in public-store account disallowed, viz:			
In 2d q'r 1845, payment to Brander, Williams & Co., for two half-pipes of brandy stored by them and delivered to other persons under false pretenses	322 00		
In 3d q'r 1845, amount charged as paid to store-keeper, to pay drayage, the store-keeper having charged the drayage in his abstract of storage	180 00		
		502 00	
Add amount charged as paid on acc't of G. Dorsey, late collector, disallowed, as it should have been settled between themselves, viz:			
In 4th q'r 1844, $3.80; in 1st q'r 1845, $4.80		8 60	
Add amount short credited on acc't of fines, &c., 1st q'r 1845, the collector not having credited the United States with their moiety in case No. 6186, 1 box, (No. 1,) 11,000 cigars		124 46	

Add debentures overcharged in 2d q'r 1845, viz:				
Overissued and overpaid, No. 420, Barker, Smith & Co., April 25th, 1845		$100 00		
122 Overissued and overpaid, No. 638, M. Doyle, June 12th, 1845		95		
			100	95
Add costs of suit overpaid, 3d q'r 1845, being an error in addition of M. M. Cohen's bill			50	
" amount charged on account of Treasury notes more than covered by warrant, viz:				
In 2d q'r 1845, (amount of stolen note & interest thereon)		103 45		
From 1st July to 12th October, 1845, (amount of one note returned for proper endorsement)		50 00		
			153	45
" amount charged on account of new marine hospital, more than covered by warrants, viz:				
In 4th q'r 1844, $100.00; in 2d q'r 1845, $137.00; in 3d q'r 1845, $105.55			342	55
Add amount charged for light-house disbursements, more than covered by warrants, being for sundry items suspended and disallowed for reasons given to him on the adjustment of said account, viz:				
In 3d quarter 1844	8 71			
" 4th do. 1844	75 85			
" 2nd do. 1845	102 50			
		187 06		
Deduct short light-house disbursements, 3d q'r 1845, being less than covered by warrants No. 3959		151 29		
			35	77
Amount carried forward			$1,268 28	$36,815 86
Amount brought forward			$1,268 28	$36,815 86
123 Add amount charged as balance of official emolument-account, from 1st July, 1844, to 12th October, 1845, more than allowed in the above statement			3,010	50
Add commissions overcharged per last statement		683 21		
Less commissions allowed to him in the above statement		350 13		
			333	08
				4,611 86
				$41,427 72
Deduct this sum credited by him in 3d q'r 1844, for money received on account of G. Dorsey, late collector, being a matter to be settled between themselves.				51 08
			Dollars	41,376 64

TREASURY DEPARTMENT,
1ST AUDITOR'S OFFICE,
May 25*th*, 1854,

Stated by

J. COLGATE.

OFFICE OF COMMISSIONER OF CUSTOMS,
May 30*th*, 1854.

W. A. W.

J. BARTRAM NORTH.

***The United States** in account current with Thomas Barrett, collector of the customs for the district of New Orleans, from the 25th of July to the 30th of September, 1844, in the third quarter of the year 1844.*

D'R.

1. To payments of debentures		15,994 43
2. To " to inspector, weigher, measurer, ma'ker, & guager		20,009 52
124 3. To payments to revenue boats and boatmen		840 00
4. To payments on account of contingent expenses		4,394 65
5. " payments to clerks in the naval office		363 00
6. To payments to naval officer and surveyors, for salary		546 50
7. " payments *payment* on account of U. S revenue-cutter Woodbury		4,223 59
8. " Payments on account of appraiser's office		1,177 62

9. " amount refunded to correct errors in duties on merchandise		773 48
10. " payment to deputy collector, Natchitoches		630 00
11. " payment to collector at Teche		200 00
12. " do. " do. " Shieldsborough		75 24
13. " do. on account U. S. schooner Vigilant		48 00
14. " payment " do. of public stores		1,101 14
To balance		121,382 63
		$171,764 80

C'R.

By amount of duties on goods imported this quarter—		
In vessels of the United States	152,252 90	
" " foreign equalized	14,156 10	
" " other foreign	462 23	
On inland importation	1,774 53	
	168,645 76	
125 A. Less this amount unsettled entries belonging to this quarter, the deposits on which appear below	6,896 72	
		161,749 04
By amount of deposits above mentioned, made to secure duties on entries belonging to this quarter		8,973 00
By amount of duties on tonnage	185 55	
B. By amount of light-money	160 57	
		346 12
By amount of marine-hospital dues	549 55	
C. Less commissions, 1%	5 50	
		544 05
D. By amount of interest received		85 30
E. By amount received on account of G. Dorsey, late collector		51 08
F. By amount on account fines, forfeitures, and penalties; this sum unpaid and due to T. G. Morgan, late collector		16 21
		$171,764 80

TREASURER OF THE UNITED STATES.

D'R.

To remittances, as follows:	
Treasury notes and interest cancelled and returned to Secretary of Treasury	56 561
In certificates of deposits in Bank of Louisiana	80,000 00
To commissions on remittances and payments to officers of the customs, &c., $129,624 85	1,309 34
To balance	39,507 58
	$121,382 63

C'R.

By balance brought down from above account	121,382 63
126 Dollars	$121,382 63
By balance brought down	39,507 58

COLLECTOR'S OFFICE,
New Orleans, 30th September, 1844.

THO'S BARRETT, *Collector.*

(Indorsed:) The United States in account current with Thomas Barrett from 25 July to 30th September, 1844. E.

The United States in account current with Thomas Barrett, collector of the customs for the district of New Orleans, during the fourth quarter of the year 1844.

D'R.

1. To payment of debentures	31,446 33
2. " do. to inspectors, weigher, measurer, marker, and guager	23,841 30
3. To payments on account of revenue boats and boatmen	1,466 89

4. To payments on account of contingent expenses		7,159 49
5. To payments to clerks in naval office		368 00
6. To do. to naval officer and surveyor for salary		312 50
7. To payments on account United States revenue-cutter Woodbury		4,215 55
8. To payments on account of appraiser's office		1,470 58
127 9. To amount refunded to correct errors in duties on merchandise		7,662 78
10. To amount paid to deputy collector at Natchitoches		455 00
11. To amount paid collector at S't Mark's		9 41
12. To do. do. do. " Pearl River		240 00
13. To payments on account of United States schooner Vigilant		606 79
14. To payments of Treasury-draft No. 3472, issued on warrant No. 4511, order of W. L. Poole, mil. st'r-k'r		10 55
16. To payments on account of new marine hospital		9,800 00
16. To payments on account of G. Dorsey, late collector		3 80
17. To payments on account of public stores		826 00
To balance		506,414 88
		596,309 85

C'R.

By amount of duties on goods imported this quarter:			
In vessels of the United States	472,929 62		
" " foreign equalized	105,584 45		
" " other foreign	5,632 10		
A. On inland importations	6,577 83		
		590,724 00	
Less this amount unsettled entries belonging to this quarter, the deposits on which appear below		16,615 73	
			574,108 27
128 By amount of deposits above mentioned, made to secure duties on entries belonging to this quarter			14.941 89
By amount of duties on tonnage		2,744 90	
By amount of light-money		1,990 81	
B. By amount of discriminating duties		12 37	
			4,748 08
By amount of marine-hospital dues		2,429 69	
C. Less commissions, 1 %		24 30	
			2,405 39
D. By amount of interest received			102 30
E. By do. " fines, forfeitures, and penalties			3 92
			$596,309 85

TREASURER OF THE UNITED STATES.

D'R.

To remittances, as follows:			
Treasury notes and interest cancelled and returned to Secretary of Treasury		1,970 62	
In certificates of deposits in Bank of Louisiana		360,000 00	
			370,970 62
To commission on remittances and payments to officers, &c., &c			4,553 26
To balance			170,398 58
			$545,922 46

C'R.

By balance of last account-current, 3d quarter 1844	39,507 58
By balance brought down from above account	506,413 88
	$545,922 46

COLLECTOR'S OFFICE,
New Orleans, 3st December, 1844.

THO'S BARRETT, *Collector*.

129 (Indorsed:) Marked "F," and referred to in bill of exceptions.

The United States in account-current with Thomas Barrett, collector of the customs for the district of New Orleans during the first quarter of the year 1845:

D'R.

To payments of debentures				117,815 19
" do. to inspectors, weigher, measurer, markers, and guager				23,227 48
" payments on account of revenue boats and boatmen				1,823 50
" payments on account of contingent expenses				3,025 91
" payments to clerks in naval office				360 00
" do. to naval officer and surveyors for salary				312 50
" payments on account of U. S. revenue-cutter Woodbury				4,538 44
" payments on account of appraiser's office				1,288 10
" amount refunded to correct errors in duties on merchandise				2 281 38
" amount paid to deputy collector at Natchitoches				465 00
" amount paid deputy collector at Shreveport				319 86
" amount paid to collector at S't Marks				1,780 00
" amount paid to collector at Pensacola				1,500 00
" payment on account U. S. Schooner Vigilant				51 16
130 To payments on account of new marine hospital				12,505 00
" do. " do. of George Dorsey, late collector				4 80
payments on account of T. G. Morgan, late collector				3 26
" payments on account of surveyor's office				534 25
" payments on account of public stores				1,095 34
To balance carried to account with treasurer				405,202 32
				578,133 49

C'R.

By amount of duties on goods imported this quarter—			
In vessels of the United States	392,199 27		
" do. equalized foreign	116,976 24		
" do. other foreign	2,596 10		
On inland importations	58,936 36	570,707 97	
Less this amount unsettled entries belonging to this quarter, the deposits on which appear below		13,875 39	556,832 58
By amount of deposits above mentioned, made to secure duties on entries belonging to this quarter			12,087 55
By amount of duties on tonnage		2,310 76	
" do. " light-money		1,359 93	
" do. " discriminating duty		386 87	4,057 56
" do. " marine hospital dues		2,958 21	
Less commission 1%		29 58	2,928 63
By amount of interest received			163 34
" Net proceeds of sales, 2nd September, 1844.	2,958 67		
131 By net proceeds sales 23rd September, 1844.	678 98	2,737 65	
Less expense on same 1% store-keeper's statement	98 51		
This amount retained by store-keeper being surplus of expenses over and above receipts in the fourth quarter of the year 1844	574 91	673 82	2,063 93
			3 3

TREASURER OF THE UNITED STATES.

D'R.

To remittances as follows—	
Treasury notes and interest cancelled and returned to Secretary of the Treasury.	8 165 34
Treasury notes, new emission, cancelled and returned to Secretary of the Treasury	156,300 00
In certificate of deposit in Bank of Louisiana	308,009 00
To commission on remittances and payments to officers, &c	6,466 23
To balance due the United States	96,669 33
	575,600 99

C'R.

By balance brought down from above account	405,202 32
By balance of last account-current, 4th quarter 1844	170,398 58
	575,600 90
By balance brought down due the United States	96,669 33

COLLECTOR'S OFFICE, *New Orleans*, 31*st March*, 1845.

THO'S BARRETT, *Collector.*

(Indorsed:) Marked G, and referred to bill of exceptions.

132 *The United States in account current with Thomas Barrett, collector of the customs for the district of New Orleans, during the second quarter of the year* 1845.

D'R.

1. To payments of debentures	203,016 10
2. To do. to inspectors, weighers, measurers, marker, and gauger	26,489 69
3. To payments on account of revenue boats and boatmen	1,890 00
4. To payment on account of contingent expenses	1,610 19
5. To payments to clerks in naval office	364 00
6 To do. to naval officer & surveyors for salary	312 50
7. To payments on account United States revenue-cutter Woodbury	2,674 79
8. To payments on account of appraiser's office	1,183 02
9. To amount refunded to correct errors in *in* duties on merchandise	23 70
10. To amount paid to deputy collector at Natchitoches	465 00
11. To amonnt paid to do. do. " Shrevesport	375 00
12. To amount paid to collector at S't Mark's	2,100 00
13. To amount paid to collector at S't Mark's	1,900 00
14. To amount paid to collector at Vicksburg	463 00
133 15. To amount paid to collector at S't Augustine	500 00
16. To amount paid to do. do. Natchez	50 00
17. To payments on account of new marine hospital	7,668 07
18. To payments on do. " surveyor's office expenses	540 35
19. To payments on do. " naval officer's expenses	375 00
20. To payments on do. " public stores	894 36
21. To balance	141,791 99
	$394,686 76

C'R.

By amount of duties on goods imported this quarter:			
In vessels of the United States	236,500 34		
" do. foreign equalized	22,886 19		
" do. other foreign	3,765 15		
On inland importations	124,550 01		
		387,701 69	
Less this amount unsettled entries belonging to this quarter, the deposits on which appear below		10,106 61	
			377,595 08
By amount of deposits above mentioned made to secure duties on entries belonging to this quarter			11,868 39
By amount of duties on tonnage		1,604 37	
By amount of duties on light-money		1,389 57	
			2,993 94
By amount of marine-hospital dues		1,759 67	
134 Less commission 1%		17 60	
			1,742 07
By amount of interest received			487 28
			$394,686 76

TREASURER OF THE UNITED STATES.

D'R.

To remittances as follows:		
Treasury notes and interest cancelled, and returned to Secretary of Treasury	1,435 98	
Treasury notes, new emission, cancelled and returned to Secretary of Treasury	21,950 00	
In certificates of deposits in Bank of Louisiana	155,000 00	
		178,385 98
To commission on remittances and payments to officers, &c		4,311 34
To balance		55,764 00
		$238,461 32

CR.

By balance of account current 1st quarter 1845	26,669 33
" balance brought down from above account	141,791 99
	$238,462 32
To balance brought down	$55,754 00

COLLECTOR'S OFFICE,
New Orleans, 30th June, 1845.

THO'S BARRETT, *Collector.*

(Indorsed:) Marked "H," and referred to in bill of exceptions.

The United States in account current with Thomas Barrett, collector of the customs for the district of New Orleans, during the third quarter of the year 1845.

D'R.

135	1. To payments on debentures	92,776 27
	2. To do. to inspectors, weigher, measurer, marker, and gauger.	22,892 96
	3. To payments on account revenue boats and boatmen	2,512 61
	4. To payments on account of contingent expenses	3,696 74
	5. To payments to clerks in naval office	368 00
	6. To do. to naval officer and surveyors for salary	329 87
	7. To payments on account of revenue-cutter Woodbury	3,888 08
	8. To payments on account of appraiser's office	1,161 70
	9. To amounts refunded to correct errors in duties on merchandise	30 92
	10. To amounts paid to deputy collector at Natchitoches	465 00
	11. To amount paid to collector at S't Augustine	1,100 00
	12. To amount paid to collector at Pensacola	1,500 00
	13. To do. do. to collector at Pearl River	154 84
	14. To do. do. to do. " Natchez	30 00
	15. To payments on account of surveyor's office expenses	407 79
	16. To payments on account of naval officers	330 07
	17. To do. " do. of public stores	1,969 68
	18. To do. " do. of new marine hospital	196 45
136	19. To amount overcredited in preceding quarters, say from 3rd quarter, 1844, to 2d quarter, 1845, inclusive, being excess of deposits made to secure duties on merchandise, same refunded in settling entries of statement	376 38
	To balance	67,871 06
		202,058 42

'CR.

	By amount of duties on goods imported this quarter in vessels of the United States	178,857 95	
	foreign equalized	16,807 40	
	other foreign	793 38	
A.	on inland importations	2,840 31	
			199,299 04

	By amount of duties on tonnage		821 21	
B.	By do. of " " light-money		720 68	
				1,571 89
	By do. of marine-hospital money		700 00	
C.	less commission 1%		7 00	
				693 00
D.	By do. of interest received			34 61
E.	By do. on account U. S. schooner Vigilant			46 93
	By do. received from W. F. Wagner, U. S. marshal, on account of bonds in suits			412 95
				202,058 42

TREASURER OF THE UNITED STATES.

D'R.

	To remittances as follows:	
	Treasury notes and interest cancelled and returned	103 00
	Treasury notes, new issue, cancelled and returned	1,300 00
	In certificates of deposit credit U. S. Treasurer	50,000 00
	To commission on remittances and payments to officers, &c	1,824 19
137	To balance	126,407 87
		$179,635 06
	To balance brought down	$126,407 87

C'R.

By balance of account current 2d quarter, 1845	55,764 00
" balance from above account	67,871 06
" amount received from Treasurer of the United States	56,000 00
	$179,635 06

COLLECTOR'S OFFICE,
New Orleans, 30th September, 1845.

D O. HINCKS,
D'y Collector.

(Indorsed:) The United States in account current with Thomas Barrett during the third quarter of the year 1845. Marked "I," and referred to in bill of exceptions.

The United States in account with Thomas Barrett, collector of the customs for the district of New Orleans, from the 1st to 12th October, 1845, *in the fourth quarter of the year* 1845.

D'R.

1.	To payments of debentures	2,946 91
2.	To " on account of inspectors, weigher, &c	72 12
3.	To payments on account of contingent expenses	84 93
	4. To payments on account of revenue boats and boatmen	39 00
138	5. To payments on account of appraiser's office	2 00
	6. To payments on account of naval office expenses	90 00
7.	To payments on account of public stores	4 00
	To balance	39,125 65
		42,364 61

C'R.

	By amount of duties on goods from 1st to 12th October, 1845:		
	In vessels of the United States	31,566 43	
	" " equalized foreign	7,963 51	
	" " other foreign	592 18	
A.	On inland importations	1,181 37	
			41,303 49
	By amount of duties on tonnage	264 34	
B.	By " of light-money	264 34	
			528 68

	By "	of marine-hospital money	168 75	
C.		less commission 1 %	1 69	
				167 06
D.	By "	of interest received		365 38
				42,364 61

TREASURER OF THE UNITED STATES.

D'R.

	To remittances as follows:			
	Treasury notes and interest cancelled and returned		106 00	
	Treasury notes, new issue, cancelled and returned		100 00	
	Certificates of deposit in Bank of Louisiana		48,000 00	
				48,206 00
139	To com'ission on remittances and payments to officers, &c			1,122 48
	To marine-hospital disbursements	3rd quarter, 1844	5,449 71	
	To marine-hospital do.	4th quarter, 1844	6,676 86	
	To marine-hospital do.	1st quarter, 1845	18,322 43	
	To marine-hospital do.	2nd quarter, 1845	2,792 18	
	To marine-hospital do.	3d quarter, 1845	4,023 33	
				37,268 51
	To light-house do.	3rd quarter, 1844	3,232 37	
	To light-house do.	4th quarter, 1844	7,572 00	
	To light-house do.	1st quarter, 1845	5,205 46	
	To light-house do.	2nd quarter, 1845	3,487 94	
	To light-house do.	3rd quarter, 1845	3,082 65	
				22,580 42
	To balance of emolument account	3d quarter, 1844	3,643 06	
	To balance of do.	4th quarter, 1844	1,734 02	
	To balance of do.	1st quarter, 1845	2,761 24	
	To balance of do.	2nd quarter, 1845	2,183 52	
140	To balance of do.	3rd quarter, 1845	5,434 69	
	To balance of emolument account	present period	3,783 62	
				19,540 25
	To balance			36,815 86
				$165,533 52

C'R.

By balance of account current 3d quarter, 1845	$126,407 87
By balance brought down from above account	39,125 65
	165,533 52
By balance brought down due the United States	36,815 86

COLLECTOR'S OFFICE,
New Orleans, 12th October, 1845.

D. O. HINCKS.
D'p'y Collector.

(Indorsed:) The United States in account current with Thomas Barrett, 1st to 12th October, 1845. Marked "J," and referred to in bill of exceptions.

(Indorsed:) Marked "X," and referred to in bill of exceptions.

Answer.—Filed January 11th, 1870.

United States circuit court for the fifth circuit and district of Louisiana.

THE UNITED STATES OF AMERICA
vs.
BESSIE ELGEE GAUSSEN, EXECUTRIX. } No. 5922.

141 The defendant herein, sued as executrix of the last will and testament of John K. Elgee, deceased, for answer to plaintiff's

petition, denies all and singular the allegations therein contained not hereinafter specially admitted.

The defendant avers that she does not know whether the alleged signature of the decedent, John K. Elgee, to the bond sued upon genuine or not, and she requires strict proof of its *its* genuineness.

And, further answering, defendant avers that if said bond was ever executed, delivered, and took effect, which is not admitted, then defendant avers that said bond, after its execution, was rendered void and null, so far as said decedent was concerned, for this, that subsequent to its date, and during the period of the term of office of Thomas Barrett as collector of the port of New Orleans, the United States imposed on and exacted of him the performance of duties and the assumption of responsibilities in regard to the receipt, custody, and disbursement of the monies received in his said capacity as collector aforesaid, different and variant from those duties and responsibilities in that regard legally incumbant upon him as collector aforesaid at the date of said bond, under the law then existing and in force.

142 That during his said term of office said Barrett was dispensed by the United States from his duty and obligation of paying certain monies received by him in his said capacity to the United States, in the mode required by law, and in lieu thereof was required by the United States to expend and disburse, and under its orders he did actually expend and disburse, during his said official term, a large portion of said monies by payments made to collectors and surveyors of other collection districts, and to various other officers of the Government.

That said Barrett was required by the United States to expend and disburse, and he did, in accordance with its orders, expend and disburse, during his said official term, a large portion of said monies for the construction of the new marine hospital and for the maintainance and supply of existing hospitals and light-houses, and of vessels of the revenue and naval service, and for other purposes entirely beyond the scope of his duties as collector aforesaid, and as fixed and defined by law.

That said Barrett was required by the United States, in his said capacity as collector aforesaid, to receive and disburse, and did

143 actually, during his said official term, receive and disburse, under its said requirements, large sums of money which he was not required by law to receive and disburse in his said capacity as collector, all of which appears by the account filed by the plaintiff herein; and defendant charges that the duties and risks and responsibilities of said Barrett as collector aforesaid, without the consent of said decedent, were varied, enlarged, and changed by the United States subsequent to the date of said bond, and during his official term, whereby the liability of said decedent as surety upon said bond, if it ever existed, was avoided and discharged.

This defendant further avers that the said Thomas Barrett departed this life about the year 1846, in New Orleans, leaving a large real and personal estate, consisting in property and assets more than sufficient to pay the amount of plaintiff's demand. That if the United States had a valid claim against said Barrett it had the right of priority of payment on such property and assets, which it neglected to enforce and lost. That upon said bond are signatures which purport to be those of François Delery, Sylvan Peyroux, Lucien Hermann, M. B. Cautrelle; that all of said parties are dead; that each died leaving a large and valuable

144 estate—more than enough to pay the amount claimed in this suit; that if the United States had a valid claim against said Barrett and said Francois Delery, Sylvian Peyroux, Lucien Hermann,

and M. B. Cautrelle, it had the right of priority of payment of said demand out of each and all of said estates, which it neglected to enforce and lost, whereby the liability of said J. K. Elgee, if it ever existed, was discharged.

Wherefore defendant pray' for judgment in her favor, that plaintiff's demand be dismissed with costs, that this cause be tried by a jury, and for general relief.

(Signed) C. ROSELIUS & ALF. PHILLIPS,
Per JNO. FINNEY.
(Signed) LEA, FINNEY & MILLER, *Att'ys.*

Hearing and continuance.—Extract from minutes, November term, 1870.

NEW ORLEANS, *Wednesday, March 29th*, 1871.

Court met pursuant to adjournment. Present, Hon. W. B. Woods, presiding judge.

THE UNITED STATES
vs.
M'R'S B. E. GAUSSEN, EX. OF JNO. K. ELGEE. } No. 5922.

This cause was called for trial before the court and a jury—U. S. attorney, for plaintiffs; Roselius and Phillips, and Lea, Finney and
145 Miller, for defendant—when the following jurors were called and sworn to try the issue:

1. R. H. Isabelle.
2. P. Pohlman.
3. Aug. Hoffman.
4. P. Casanave.
5. L. Augustin.
6. Ch's Delpit.
7. Alf. Delaup.
8. Geo. Gracien.
9. A. Courcelle.
10. E. Rillieux.
11. J. A. Landries.
12. Edw'd Milmer.

The four last-named being chosen as talisman, by reason of the exhaustion of the roll.

And the panel being now complete, the trial proceeded; and, after hearing the pleadings and evidence, the cause is continued till to-morrow at 11 a. m.

Plaintiff's bill of exceptions No. 1.—*Filed March 29th*, 1871.

Circuit court of the United States, fifth circuit and district of Louisiana.

THE UNITED STATES OF AMERICA
vs.
M'R'S BESSIE ELGEE, WIFE OF EDMUND G. Gaussen, executrix of the last will and testament of John K. Elgee. } No. 5922.

Bill of exceptions.

Be it remembered that afterwards, to wit, at a circuit court of the United States of America, began and held at the city of New Orleans, in the State and district of Louisiana, in and for the fifth circuit
146 and district aforesaid, and the first Monday in November, A. D. 1870, before the Hon. E. H. Durell, judge of the district court of the United States in and for said district of Louisiana, who was duly assigned and designated to hold said term of court, and on the twenty-ninth day of March, A. D. 1871, of said term, the aforesaid issue so joined between said parties came on to be tried before a jury of the said

district of Louisiana, for that purpose duly empanelled; at which day came there as well the said plaintiff and the said defendant, by their respective attornies aforesaid; and the jurors of the jury aforesaid empanelled to try said issue, being called, also came, and were then and there in due manner chosen and sworn to try said issue.

And upon the trial of that issue the counsel for said plaintiff, J. R. Beckwith, United States attorney for said district of Louisiana, to maintain and prove said issue on its part, did first offer to read in evidence to the jury, as proof in said cause, the duly-certified copy of the said official bond of the said Thomas Barrett, by him duly executed as principal, and the said John K. Elgee and others as sureties, the said document being a duly-certified copy of the said official bond of the said Thomas Barrett as collector of the customs for the district of New
147 Orleans, in the State of Louisiana, referred to and filed with and made a part of the petition in the cause, and is and was, with the certificate and seal attached, in the words and figures following, to wit:

Know all men by these presents, that we, Thomas Barrett, as principal, and Francois Delery, John K. Elgee, Silvain Peyroux, Lucien Hermann, and Michel Bernard Cautrelly, as sureties, are held and firmly bound unto the United States of America in the full and just sum *sum* of one hundred and twenty thousand dollars, money of the United States; to which payment, well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this sixth day of July, in the year one thousand eight hundred and forty-four.

The condition of the foregoing obligation is such, that whereas the President of the United States hath, pursuant to law, appointed the said Thomas Barrett to the office of collector of the customs for the district of New Orleans, in the State of Louisiana:

Now, therefore, if the said Thomas Barrett has truly and faithfully executed and discharged, and shall continue truly and faithfully
148 to execute and discharge, all the duties of the said office according to law, then the above obligation to be void and of none effect; otherwise it shall abide and remain in full force and virtue.

Sealed and delivered in the presence of—

(Signed) THO'S BARRETT. [L. S.]
ISAAC STEWART.
D'AUNIVILLE GRIFFIN.

(Signed) FRANCOIS DELERY. [L. S.]
ISAAC STEWART.
D'AUNIVILLE GRIFFIN.

(Signed) JNO. K. ELGEE. [L. S.]
ISAAC STEWART.
D'AUNIVILLE GRIFFIN.

(Signed) SILVAIN PEYROUX. [L. S.]
ISAAC STEWART.
D'AUNIVILLE GRIFFIN.

(Signed) LUCIEN HERMANN. [L. S.]
ISAAC STEWART.
D'AUNIVILLE GRIFFIN.

(Signed) MICHEL BERNARD CAUTRELLY. [L. S.]
ISAAC STEWART.
D'AUNIVILLE GRIFFIN.

20th section act March 2nd, 1799.

I, Thomas Barrett, having been appointed to the office of collector of the customs for the district of New Orleans, in the State of Louisiana, do solemnly, sincerely, and truly swear that I will diligently and faithfully execute the duties of the said office of collector of the customs, and will use the best of my endeavors to prevent and detect frauds in relation to the duties imposed by the laws of the United States.

149 I further swear that I will support the Constitution of the United States.

(Signed) THOMAS BARRETT,
Collector.

Sworn to and subscribed this 6th day of July, 1844, before me. Witness my hand and seal.

(Signed) THO'S McCALEB, [L. S.]
United States District Judge for Louisiana.

Act July 2nd, 1862.

UNITED STATES OF AMERICA:

TREASURY DEPARTMENT,
October 9th, 1866.

Pursuant to the act of Congress of 22nd February, 1849, I hereby certify that the annexed is a true copy of the bond of Thomas Barrett, collector of the customs for the district of New Orleans, in the State of Louisiana, and filed in this Department.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

[SEAL OF TREASURY.] H. McCULLOCH,
Secretary of the Treasury.

Whereupon the said defendant, by her counsel, did then and there object, and insist that the said certified copy of said bond was

150 not admissible to establish the execution of said bond, or to prove, or tend to prove, that the said John K. Elgee had at any time joined in the execution of said bond, and claimed and insisted that the pleadings and issues in the cause were so made, and the affidavit required by the act of the 3rd of March, 1797, chapter 20, sect. 2, was also made and filed; which affidavit, marked "a a," is hereby made a part of this bill, as also the order of court thereupon, which is also annexed, marked "b b," and made a part of this bill, as to compel and require the said plaintiff to produce and prove the original bond, and that the pleadings and the part of the said debt had put in issue the genuine'ss of the alleged signature of the said John K. Elgee, and said bond, and that there was in the said answer of the said defendant the equivalent of the plea of "non est factum;" all of which was denied by said counsel for plaintiff.

Whereupon the said judge did then and there rule and decide that the said objection of the said debt was well taken, and did refuse to allow the certified copy of said bond to be produced in evidence in said cause and read to the jury, and did exclude the same from said jury.

151 Whereupon the said plaintiff, by its attorney, did then and there except to the ruling and decision of the said judge in that behalf,

and to the exclusion of the said evidence from the jury, and did then and there tender to the court this his bill of exceptions in that behalf, and prayed that the same might be signed, sealed, and filed in the cause, and made a part of the record therein; and it is done accordingly.

By the court.

Immediately upon the ruling of the court rejecting the copy, the original was produced by the U. S. attorney, and, after proof made of its execution, was read and admitted in evidence, and sent to the jury.

[L. S.] (Signed) E. H. DURELL, *Judge.*

(In pencil:) Examined. L. F. & Miller.

Affidavit referred to in the foregoing bill, and made part thereof, marked "a a," and filed Nov. 15th, 1869.

In the hon. the U. S. circuit court for 5th circuit and district of Louisiana.

THE UNITED STATES
vs.
M'R'S E. B. GAUSSEN, EXECUTRIX OF THE WILL of John K. Elgee.

M'r's Bessie Elgee, wife of Edmond J. Gaussen, executrix of the
152 last will and testament of John K. Elgee, now comes into court and craves oyer of the original bond alleged to have been signed by the testator; that she does not know nor believe that the testator did ever sign the said bond, and can only ascertain the fact by the production and inspection of the original of said bond; that she is unable to file an answer in this suit without having an opportunity of examining said bond.

Wherefore appearer prays that the plaintiff be ordered to exhibit and produce the bond on which the suit is brought; and that in the mean time she be dispensed from answering to the merits. And she prays for general relief; and, as in duty bound, &c., &c.

(Signed) C. ROSELIUS & ALFRED PHILIPS.

Samuel Delgado, agent, &c., of appearer, swears that the facts set forth in the above prayer for oyer are correct and true, and that this application is not made for delay.

(Signed) SAM'L DELGADO.

Sworn to and subscribed before me Nov. 15th, 1869.

(Signed) T. B. VINOT,
D'y Clerk.

Marshal's return on the above prayer.

Received Nov. 15th, 1869, by the U. S. marshal, and on the same
153 day, month, and year, served a copy of prayer for oyer, &c., on P. H. Morgan, U. S. att'y named herein, by handing the same to James B. Murtagh, clerk in office of U. S. att'y in this city.

New Orleans, Nov. 16th, 1869.

(Signed) S. W. READ,
D'y U. S. Marshal.

Copy of order referred to in foregoing bill of exceptions as marked b b, and made part thereof.—Extract from minutes November term, 1869.

NEW ORLEANS, *Tuesday, November 16th*, 1869.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, district judge.

THE UNITED STATES
vs.
M'R'S B. E. GAUSSEN, E'C'X, &C. } No. 5922.

In this case, after hearing counsel on both sides, it is ordered that the defendant's prayer for oyer be granted, and that she be dispensed from answering until the plaintiff shall have produced the bond sued on.

Plaintiff's bill of exceptions No. 2.—Filed March 29th, 1871.

Circuit court of the United States, fifth circuit and district of Louisiana.

154 THE UNITED STATES OF AMERICA
vs.
M'R'S BESSIE ELGEE, WIFE OF EDMOND J. Gaussen, executrix of the last will and testament of John K. Elgee, deceased. } No. 5922. Bill of exceptions.

Be it further remembered that afterwards, to wit, at a term of said circuit court began and held at the city of New Orleans, in the State of Louisiana, on the first Monday in November, A. D. 1870, by the Hon. E. H. Durell, judge of the district court of the United States for said district of Louisiana, duly designated to hold said court according to the form of the statute in such case made and provided; that afterwards, on the 29th day of March, A. D. 1871, of the said term, the aforesaid issue came to be tried by a jury of the district of Louisiana aforesaid, for that purpose duly empanelled.

At which time came there as well the said plaintiff and the said defendant, by their respective attorneys aforesaid, and the jurors aforesaid of the jury aforesaid, empanelled to try the said issue, being called, also came, and were then and there in due manner chosen to try the same issue.

155 And upon the trial of that issue J. R. Beckwith, U. S. attorney, for and on behalf of the plaintiff, and in order to prove and maintain said issue on the part of said plaintiff, offered to read to the jury as evidence the certified copy of the official bond referred to and described in said plaintiff's petition and filed therewith.

To the introduction and reading whereof to the said jury the said defendant, by her counsel, did object; which objection was sustained by the said judge, and said plaintiff not allowed to read the same to the jury as evidence.

To which said ruling and decision of the said judge the said plaintiff did then and there except, and tender to the court then and there his said bill of exceptions in that behalf, which was duly signed and sealed and made a part of the record, where the same now remains.

That afterwards, and after the said ruling of the said judge above set forth, the said plaintiff did then and there produce the said original bond described in the said plaintiff's petition and sued on in this action,

and, after due proof of its execution, gave the same to the jury as evidence in its behalf.

Whereupon, in order to prove ortend to prove the breaches of
156 the condition of said bond as stated in said plaintiff's petition, and to establish the indebtedness of said defendant and of the said late John K. Elgee, named in said bond, the plaintiff produced and offered as evidence thereof copies of the reports of the First Auditor of Treasury of the United States, numbered respectively 5688, 5700, 5856, 5870, 9391, 6423, 9241, and 15817, as admitted and certified by the Comptroller and Commissioner of Customs, upon the accounts of Thomas Barrett, late collector of customs for the district of New Orleans, Louisiana, under the said bond described in said petition, and also of the statements of differences thereon, all of said papers being fastened together as a whole and embraced in one certificate; all of which more fully and at large appears by the said transcript of said report and adjustment of account filed in this case with the plaintiff's petition therein; which said document is made a part of this bill of exceptions, and is in the words and figures following:

(The Treasury transcript of the account of the said Thomas Barrett, filed with the said plaintiff's petition, marked "X," will be found copied in this transcript on pages 8 to 140 inclusive.)

Whereupon the said defendant, by her counsel, while making
157 no objection to the form or substance of the certificate by which the authenticity of such transcript was attested, objected to the same being produced and given to the jury as evidence in said cause, and, as grounds and reasons therefor, did urge and insist before said court, and to said judge, that the same was inadmissable as evidence in the said cause and should not be read to the jury for the following reasons, among others:

To the introduction of said reports 5688, 5700, 5856, 5870, 9391, 6423, 9241, and 15817, and statements of differences in evidence, the defendant objected on the following grounds, viz:

That the act of Congress of the 3rd of March, 1797, which makes transcripts from the books and proceedings of the Treasury evidence, only applies to public defaulters in terms, and being in derogation of common right, and penal in its character, cannot be extended by construction so as to make such transcripts evidence against the sureties of such defaulters or the legal representatives of deceased sureties.

And defendants further objected that said reports, which, together with the quarterly returns E, F, G, H, I, and J, constituted an entire document, said reports and returns being fastened together and
158 authenticated by one and the same certificate, were fragmentary, incomplete, and partial.

That the act of Congress does not make the reports of the Auditor evidence; that it only makes such reports grounds for the institution of suits by the Comptroller; that said reports and statements of differences charged Barrett with groos sums and balances without any detail or exhibition of the items of which they were composed, as, for instance, in report 5688 a gross sum of twenty-five hundred and two $\frac{24}{100}$ dollars is charged against Barrett for duties on railroad iron imported in 1836, and not credited by the collector at the time; that it disallowed gross sums and subtracted gross sums on and from the credit side of Barrett's account without any detail or specification of the items disallowed, as, for instance, in report 15817, by comparing that report with the fractional quarterly return for the period from the 1st to 12th of October, 1845, a gross sum of three thousand ten $\frac{24}{100}$ dollars is disallowed

on the sum total of official emolument for the whole period of Barrett's term of office, without any detail or exhibition of the items disallowed, or even of the quarters on which they were disallowed.

The disallowance is made on the basis of a report, No. 6771,
159 which is not contained in the transcript, nor otherwise furnished or offered in evidence.

That, by comparing quarterly return for the 3d quarter of 1844 with report 5688 and the statement of differences, it will appear that Barrett claimed credit for $4,394.65 for contingent expenses. He was allowed only $783.46 in the report, $3,611.19 being disallowed; but the detail of the items disallowed, as appeared by the statement of differences, amounts to only $3,239.13, and there is no detail or specification of the balance of the $3,611.19 disallowed, nor is there any information or explanation in the transcript of what composes that balance nor why it was disallowed.

That, by comparing quarterly returns for the first quarter of 1845 with report 5856, it will appear that Barrett claimed credit for $3,025.91 for contingent expenses. He was allowed only $1,125.08 in the report of the Auditor, and $1,900.83 was disallowed. But the statement of differences only explains the disallowance to the amount of $485.00, leaving the balance disallowed entirely without explanation or information as to what items were disallowed, or why they were disallowed, and so on in other instances.

And further, that it is impossible to ascertain from said reports and statements what was allowed or what was disallowed on the credit
160 side of Barrett's account, or what were the items which made up the gross sums charged to him.

And further, that said reports and statements of differences did not contain or exhibit, or purport to contain or exhibit, the accounts as they were presented to and acted upon by the accounting officers of the Department, nor their action nor their proceedings relative thereto. Which said objections the said judge did sustain and hold well taken, and refused to allow the same to be given in evidence to said jury, and by reason of the said ruling and decision of the said judge the same was not read to said jury or given in evidence.

To which said ruling and decision of the said judge in that respect the said plaintiff did then and there except, and tender to the court then and there his bill of exception in that behalf.

And afterwards, and after said ru'ing and decision of the said judge so made and excepted to as aforesaid, and after said certified copy of the books and proceedings of the Treasury about and concerning the said account of the said Thomas Barrett, collector, &c., as above set forth:

The said plaintiff, by its attorney, in order to prove and maintain the issue on its part, then offered to produce and read and give to
161 the jury as evidence the several statements of account of the said Thomas Barrett with the United States, rendered to the United States by the said Barrett while collector of the customs for the district of New Orleans, in the State of Louisiana, under the bond described in said plaintiff's petition, as certified in the said transcript containing the said adjustment of said accounts, and duly certified as true and correct copies of the said original statements of accounts made by the said Barrett and one D. O. Hincks, at the time deputy collector, showing a balance due the United States in the sum of thirty-six thousand eight hundred and fifteen dollars and eighty-six cents; which said certified copies aforesaid were and are on file in the suit, having been filed with the pe-

tition and contained in the said document, marked and already made a part of this bill of exceptions; also the certified copies of the account of Barrett and deputy D. O. Hincks, as shown in said Treasury transcript, marked for the purpose of identity, with this bill, E, F, G, H, I, J.

Whereupon the said defendant, by her counsel, did then and there object to the same, and insist that the statement made by the
162 said Barrett and his deputy, showing by his official quarterly report an indebtedness from him to the United States, was not proof of such debt, and did not tend to prove the same, and was not admissable to show that the said Barrett, while collector as aforesaid, became and was indebted to the United States while acting as collector aforesaid. All of which objections the said judge did then and there hold to be well taken, and did sustain said objections, and ruled and declared that the same could not be read and given in evidence, and go to the jury as proof or evidence in the cause; and the same was not allowed to be read to the jury and given in evidence.

To which last-mentioned ruling and decision of the said judge the said plaintiff, by its counsel, did also then and there except on behalf of said plaintiff.

Wherefore this cause and issues therein was submitted to said jury, and the jury aforesaid being by the said judge instructed that, under the ruling of the court rejecting said evidence, the plaintiff had not established any right to recover of and from the defendant, gave
163 their verdict for defendant. And inasmuch as the said several matters and documents so produced and offered in evidence by said plaintiff and objected to by said defendant and rejected by the court, and the said plaintiff's exception to the said ruling and decision of the said judge, do not appear by the record of the verdict aforesaid, the said counsel for the said plaintiff did then and there tender to the said court then and there this its bill of exceptions in that behalf, containg a statement thereof.

And thereupon, at the request of the said counsel for the said plaintiff, the said judge did then sign the same, and did put his seal to the bill of exceptions on the 27th day of March, 1871, and the same is filed and made a part of the record in this cause.

After this bill of exceptions was drawn and submitted to counsel for defendants, they inserted the following statement:

The defendants objected to the introduction of the account or quarterly returns of Barrett and Hincks, marked E, F, G, H, I, J, for the reason that they were partial, fragmentary, and incomplete, and that they did not contain or exhibit, or purport to contain or exhibit,
164 the action or proceedings of the accounting officers of the Department.

That it appears by the transcript which has been made a part of this bill and is annexed to the petition and forms a part of the record, and especially by reports 15817, 9241, and 6423, that by the action and proceedings of the Department after the date of the last quarterly return credits not embraced in those quarterly returns were allowed Barrett to the amount of over fifty thousand dollars, the benefit of which allowances of credit would be entirely lost to the defendant by the admission of the said quarterly returns in evidence, as offered.

That by the admission of such quarterly returns offered, the action and proceedings of the Department would not appear, and all credits allowed by the accounting officers after the re-addition of those accounts would be lost to the defendant.

That such quarterly returns were not such a transcript as the act of Congress requires, nor admissable under that act.

That parts of the transcript could not be detached from the rest and offered separately.

[L. S.] (Signed) E. H. DURELL, *Judge.*

(In pencil:) Examined and approved. Lea, Finney & Miller.

165 NOTA.—Treasury transcript of the account of Thomas Barrett, marked "X" and referred to in bill of exceptions No. 2, and made part thereof, will be found transcribed on folios 9 and 140, inclusive.

Verdict.—Extract from the minutes of Thursday, March 30th, 1871.

UNITED STATES
vs.
M'R'S B. E. GAUSSEN, EX. OF J. K. ELGEE. } No. 5922.

This cause was resumed before the court and jury, and, after hearing counsel, the cause was submitted to the jury and Alf. Delaup appointed foreman, and, without leaving their seats, they delivered the following verdict, to wit:

NEW ORLEANS, *March 30th*, 1871.

We, the jury, find a verdict in favor of defendant.

A. DELAUP, *Foreman.*

Whereupon it is ordered that the same be recorded.

Judgment.—Judgment-docket.

United States circuit court, fifth circuit and district of Louisiana. November term, 1870.

166 NEW ORLEANS, *Thursday March 30th*, 1871.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, presiding judge.
Do. Hon. E. H. Durell, district "

UNITED STATES
vs.
M'R'S B. E. GAUSSEN, EX'T' OF J. K. ELGEE. } No. 5922.

This cause was resumed before the court and jury, and, after hearing counsel, the cause was submitted to the jury, and Alf. Delaup appointed foreman; and, without leaving their seats, they delivered the following verdict, to wit:

NEW ORLEANS, *March 30th*, 1871.

We, the jury, find a verdict in favor of defendant.

(Signed) A. DELAUP, *Foreman.*

Whereupon it is ordered that the same be recorded.

By reason of the verdict and in accordance therewith it is ordered, adjudged, and decreed that judgment be entered in favor of defendant, with costs.

Judgment rendered March 30th, 1871.

Judgment signed April 4th, 1871.

(Signed) E. H. DURELL,
Judge.

167 *Petition for writ of error.—Filed June 9th, 1871.*

To the hon. the judges of the circuit court of the United States for district of Louisiana.

The petition of the United States, with respect, shows that they are aggrieved by the final judgment rendered against them in this hon. court on the 4th day of April, 1871, in the case of The United States vs. M'r's Bessie Elgee Gaussen, wife of Edmond J. Gaussen, and executrix under the will of her father, Jno. K. Elgee, deceased, and are informed that there is error therein to their prejudice.

Wherefore they pray that a writ of error therefrom be allowed them to the Supreme Court of the United States, returnable to the next term thereof.

Order granting writ of error.—Extract from minutes of Friday, June 9th, 1871.

THE UNITED STATES
vs.
M'R'S B. E. GAUSSEN, EX.

On motion of J. R. Beckwith, attorney of the United States, and on presenting and filing a petition on their behalf, representing that they are aggrieved by the judgment herein rendered against them, and praying a writ of error therefrom to the Supreme Court of the United
168 States, it is ordered that the same be allowed as prayed for.

Motion to enter mandate of Supreme Court of the United States entered and filed.—Extract from the minutes, January 27th, 1875.

Circuit court of the United States, fifth circuit and district of Louisiana, November term, 1874.

NEW ORLEANS, *Wednesday, January 27th*, 1875.

The court was duly opened by the marshal, pursuant to adjournment.

Present, honorable William B. Woods, circuit judge.

UNITED STATES
vs.
M'R'S BESSIE ELGEE GAUSSEN, EX'R'X, &C. — No. 5922.

On motion of J. R. Beckwith, U. S. att'y, and on presenting the mandate from the Supreme Court of the United States in this cause, it is ordered that the same be filed and entered of record, and that a new trial be awarded *in* conformably to the directions thereof.

Mandate Supreme Court United States.—Recorded and filed January 27th, 1875.

U. S. circuit court.

UNITED STATES
vs.
GAUSSEN. } No. 5922.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Louisiana, greeting:

169 Whereas, lately, in the circuit court of the United States for the district of Louisiana, before you, or some of you, in a cause between the United States of America, plaintiff, and Mr's Bessie Elgee Gaussen, wife of Edmond J. Gaussen, executrix of the last will & testament of her father, John Kingsbury Elgee, deceased, defendant, wherein the verdict of the jury and the judgment of the said circuit court entered in said cause are in the following words, viz:

"We, the jury, find a verdict in favor of defendant.

"A. DELAUP, *Foreman.*"

"Whereupon it is ordered that the same be recorded.

"By reason of the verdict, and in accordance therewith, it is ordered, adjudged, and decreed that judgment be entered in favor of defendant, with costs.

"Judgment rendered March 30th, 1871.

"Judgment signed April 4th, 1871."

As by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas in the present term of October, in the year of our Lord one thousand eight hundred and seventy-three, the said cause
170 came on to be heard before the said Supreme Court on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be and the same is hereby reversed.

And it is further ordered that this cause be and the same is hereby remanded to the said circuit court, with directions to award a new trial.

27th October, 1873.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity to the opinion and judgment of this court, as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness the honorable Morrison R. Waite, Chief-Justice of said Supreme Court, the tenth day of December, in the year of our Lord one thousand eight hundred and seventy four.

Taxed by—

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Motion, affidavit, and order to produce papers.—Filed April 12th, 1875.

U. S. circuit court, district of Louisiana.

171 UNITED STATES
vs.
M'R'S BESSIE GAUSSEN, TESTAMENTARY EXECUTRIX of J. K. Elgee. } No. 5022.

On motion of Finney & Miller, of counsel for the defendant, and upon suggesting that the letters and papers described in the motion to produce herein filed on the 3d March, 1871, are material upon the trial of this suit to enable the defendant to make good his defence, and on filing the affidavit annexed, it is ordered that James F. Casey, collector of the port, in whose possession said letters and papers are, be ordered to produce in court on Thursday, the 14th April, 1875, on the trial of this case, all of said letters and papers described in said motion, entered on the 3rd March, 1871, and that said collector be served with copies of said motions and of this order.

Affidavit.

Henry C. Miller, being duly sworn, deposes and says that he is of counsel for defendant, who is absent; that all the papers and letters called for in the anexed motion are material to enable defendant to make his defence to this suit.

(Signed) HENRY C. MILLER.

172 Sworn to & subscribed before me this 12th April, 1875.

(Signed) F. B. VINOT,
U. S. Comm'r.

Motion referred to in the above affidavit and annexed to the same.—Filed March 19th, 1870.

UNITED STATES
vs.
THE EXECUTRIX OF ELGEE.

On motion of Lea, Finney & Miller and C. Roselius & Alf. Philips, of counsel for the defendant, on giving the court to understand and be informed that it is nesessary for the defence of this suit that the annexed original letters, &c., addressed to the Treasury Department, &c., should be introduced in evidence, and that said letters, &c., are in the possession of and under the control of the plaintiff, it is ordered that the plaintiff produce said letters, &c., on the trial of this case, to wit:

Letters from Thomas Barrett.

To George M. Bibb, Secretary of the Treasury, dated 13th Sept., 1844.
" do. do. " " " 14th Sept., 1844.
" do. do. " " " 14th Sept., 1844.
" do. do. " " " 21 Oct., 1844.
" do. do. " " " 7 Dec., 1844.
" do. do. " " " 9 Dec., 1844.
" do. do. " " " 16 " 1844.
" do. do. " " " 23 " 1844.
" do. do. " " " 28 " 1844.
" do. do. " " " 30 " 1844.

173 To George M. Bibb, Secretary of the Treasury, dated 6th January, 1845.
" do. " " " " 13th do. 1845.
" do. " " " " 20th do. 1845.
" do. " " " " 24th do. 1845.
" do. " " " " 27th do. 1845.
" William Collins, 1st Auditor Treasury Department, " 3d February, 1845.
" George M. Bibb, Secretary of the Treasury, " 23d January, 1845.
" do. " " " " 3d February, 1845.
" do. " " " " 10th do. 1845.
" do. " " " " 17th do. 1845.
" do. " " " " 24th do. 1845.
" do. " " " " 3d March, 1845.
" do. " " " " 10th do. 1845.
" R. J. Walker, " " " " 14th do. 1845.
" do. " " " " 24th do. 1845.
" do. " " " " 31st do. 1845.
" do. " " " " 7th April, 1845.
" do. " " " " 9th do. 1845.
" Jas. W. McCulloch, Comptroller " " " 9th do. 1845.
" R. J. Walker, Secretary " " " 14th do. 1845.
" do. do. " " " 24th do. 1845.
" Jas. W. McCulloch, Comptroller " " " 3rd June, 1845.
" R. J. Walker, Secretary " " " 13th do. 1845.
" do. " " " 14th do. 1845.
" William Collins, 1st Auditor " " " 25th do. 1845.
" do. do. " " " 1st July, 1845.

Letter from Thomas Gibbes Morgan, collector, to Tully R. Wise, 1st Auditor of the Treasury D'p't, dated 30th March, 1843.

Copy of commission issued to Dennis Prieur, collector of customs, New Orleans, under his appointment, and a copy of the letter transmitting such commission to him.

174 *Order.*

Let the papers be produced as prayed for.
April 12th, 1875.
(Signed) W. B. WOODS,
Judge.

Marshal's return on above motion & order.

Received April 13th, 1875, by the U. S. marshal, and on same day I served a copy of the within motion & order upon James F. Casey, collector, by handing the same to Chief Deputy Felix Herwig.
(Signed) J. B. STOCKTON,
D'p'y U. S. Marshal.

Motion for continuance and order making E. T. Parker, adm'r, party defendant.—Entered and filed.—Extract from the minutes of April 14th, 1875.

UNITED STATES
vs. } No. 5922.
M'R'S B. E. GAUSSEN, EX.

This cause was called for trial.

J. R. Beckwith, U. S. att'y, for plaintiff. Finney & Miller & Alf. Philips for defendant.

When, on motion of W'm H. Hunt, attorney for E. T. Parker, public administrator of the parish of Orleans, and on suggesting to the court that said Parker has been appointed administrator of the succession of said John K. Elgee by the second district court of the parish of Orleans, in the lieu and stead of the said B. E. Gaussen, and that

she has been removed from her said trust and is no longer authorized to represent said succession, and that said Parker is alone empowered to do so; and on further showing to the court that said Parker has not been made party hereto and is not prepared to proceed with the trial of this cause, it is ordered that this case be continued till the 1st Monday of the next term of this court, and that said Parker, public administrator, be made a party to the suit. 175

Bill of exceptions of plaintiff.—Filed April 14th, 1875.

Circuit court of the United States, district of Louisiana.

UNITED STATES
vs.
M'R'S B. E. GAUSSEN, ADM'X. } No. 5922. Bill of exceptions.

Be it remembered that afterwards, at the 14th day of April, A. D. 1875, of the present term of said circuit court of the United States for the district of Louisiana, the Hon. W'm B. Woods, circuit judge, presiding, this cause having been set down for trial and upon the issues therein on the pleading therein, and at the opening of the said court on said day, the said United States, by J. R. Beckwith, U. S. att'y, then and there present and ready for trial and demanded that the trial of said cause proceed.

Whereupon one E. T. Parker appeared in court and made in said cause the suggestion, first orrally, and afterwards the same was reduced to writing, that is to say— 176

"On motion of W'm H. Hunt, attorney for E. T. Parker, public administrator of the parish of Orleans, and on suggesting to the court that said Parker has been appointed administrator of the succession of said John K. Elgee by the second district court of the parish of Orleans in the lieu and stead of the said B. E. Gaussen, and that she has been removed from her said trust, and is no longer authorized to represent said succession, and that said Parker is alone empowered to do so, and on further showing to the court that said Parker has not been made party hereto, and is not prepared to proceed with the trial of this cause:"

And did insist and urge to the court that said action had and was abated by reason of the matters set forth in said suggestion; that before the said cause could be lawfully tried, *that* it was necessary and requisite that the plaintiff was, in law, required to move and take steps to revive said action as against the said person claiming to be public administrator, and that said action stood abated until such action by the plaintiff, and insisted that said cause be continued for the reason aforesaid until the next term of the court, and did then and there make and show to the court no other or further cause why the trial of said cause should not proceed, as demanded by the said U. S. att'y. 177

That the said U. S. attorney, for and in behalf of the said United States, did oppose said motion, and insist that said action had and was in no manner abated by virtue of any matter so suggested to the court; that the said plaintiff, having in due form of law brought the said succession of the said Elgee into court, had no concern in any changes in the administrators of said succession; and that the death or destitution of said administratrix and the appointment of a successor in no manner affected the plaintiff.

And the court then and there considered the premises, and adjudged

that, by reason of the matter so suggested as aforesaid by the said counsel of the said E. T. Parker, the said action of the plaintiff had abated, and that before the said plaintiff could lawfully bring said cause to trial, it must revive the same against the said alleged new administrator of said succession, and did make the following order:

178 "It is ordered that this case be continued till the 1st Monday of the next term of this court, and that said Parker, public administrator, be made a party to the suit."

To which said order, ruling, and decision of the court in the premises, and to the said order so made as aforesaid, the said plaintiff did then and there except in open court, and then and there tender the court this bill of exceptions in that behalf, and prayed that the same be signed, and filed, and made a part of the record in this cause; and it is done accordingly.

[L. S.] (Signed) W. B. WOODS, *Judge.*

Motion to produce papers and affidavit.—Filed April 23rd, 1875.

U. S. circuit court.

THE UNITED STATES *vs.* M'R'S BESSIE GAUSSEN, EXECUTRIX OF J. K. Elgee. E. T. Parker, administrator, substituted. } No. 5922.

On motion of W. H. Hunt and Finney & Miller, of counsel for E. T. Parker, administrator of the succession of John K. Elgee, it is ordered that James F. Casey, collector of the port, do produce in court, on Monday morning, the 26th April, 1875, at 11 o'clock, on the trial of this cause, the letters and documents called for by the subpœna duces tecum heretofore issued and served upon said collector.

(Signed) W. B. W.

Affidavit.

UNITED STATES OF AMERICA,
District of Louisiana, ss:

179 E. T. Parker, administrator of the succession of J. K. Elgee, being duly sworn, deposes and says that the letters and documents referred to in the foregoing motions are material to the defendant to enable him to maintain his defence to this suit.

(Signed) E. T. PARKER.

Subscribed & sworn to before me this 22d day of April, A. D. 1875.

[L. S.] (Signed) R. H. SHANNON,
Comm'r U. S. Circuit Court & District of Louisiana.

Marshal's return on the foregoing motion & order.

Received, April 24th, 1875, by the U. S. marshal, and on same day, month, and year served a copy of within motion & order on J. R. Beckwith, named herein, by handing the same to him in person.

New Orleans, April 26th, 1875.

(Signed) S. W. REED,
D'y U. S. Marshal.

175 she has been removed from her said trust and is no longer authorized to represent said succession, and that said Parker is alone empowered to do so; and on further showing to the court that said Parker has not been made party hereto and is not prepared to proceed with the trial of this cause, it is ordered that this case be continued till the 1st Monday of the next term of this court, and that said Parker, public administrator, be made a party to the suit.

Bill of exceptions of plaintiff.—Filed April 14th, 1875.

Circuit court of the United States, district of Louisiana.

UNITED STATES
vs.
M'R'S B. E. GAUSSEN, ADM'X. } No. 5922. Bill of exceptions.

Be it remembered that afterwards, at the 14th day of April, A. D. 1875, of the present term of said circuit court of the United States for the district of Louisiana, the Hon. W'm B. Woods, circuit judge, presiding, this cause having been set down for trial and upon the issues therein on the pleading therein, and at the opening of the said court on said day, the said United States, by J. R. Beckwith, U. S. att'y, then and there present and ready for trial and demanded that the trial of said cause proceed.

176 Whereupon one E. T. Parker appeared in court and made in said cause the suggestion, first orrally, and afterwards the same was reduced to writing, that is to say—

"On motion of W'm H. Hunt, attorney for E. T. Parker, public administrator of the parish of Orleans, and on suggesting to the court that said Parker has been appointed administrator of the succession of said John K. Elgee by the second district court of the parish of Orleans in the lieu and stead of the said B. E. Gaussen, and that she has been removed from her said trust, and is no longer authorized to represent said succession, and that said Parker is alone empowered to do so, and on further showing to the court that said Parker has not been made party hereto, and is not prepared to proceed with the trial of this cause:"

And did insist and urge to the court that said action had and was abated by reason of the matters set forth in said suggestion; that before the said cause could be lawfully tried, *that* it was necessary and requisite that the plaintiff was, in law, required to move and take steps to revive said action as against the said person claiming to be public administrator, and that said action stood abated until such ac-

177 tion by the plaintiff, and insisted that said cause be continued for the reason aforesaid until the next term of the court, and did then and there make and show to the court no other or further cause why the trial of said cause should not proceed, as demanded by the said U. S. att'y.

That the said U. S. attorney, for and in behalf of the said United States, did oppose said motion, and insist that said action had and was in no manner abated by virtue of any matter so suggested to the court; that the said plaintiff, having in due form of law brought the said succession of the said Elgee into court, had no concern in any changes in the administrators of said succession; and that the death or destitution of said administratrix and the appointment of a successor in no manner affected the plaintiff.

And the court then and there considered the premises, and adjudged

that, by reason of the matter so suggested as aforesaid by the said counsel of the said E. T. Parker, the said action of the plaintiff had abated, and that before the said plaintiff could lawfully bring said cause to trial, it must revive the same against the said alleged new administrator of said succession, and did make the following order:

178 "It is ordered that this case be continued till the 1st Monday of the next term of this court, and that said Parker, public administrator, be made a party to the suit."

To which said order, ruling, and decision of the court in the premises, and to the said order so made as aforesaid, the said plaintiff did then and there except in open court, and then and there tender the court this bill of exceptions in that behalf, and prayed that the same be signed, and filed, and made a part of the record in this cause; and it is done accordingly.

[L. S.] (Signed) W. B. WOODS, *Judge.*

Motion to produce papers and affidavit.—Filed April 23rd, 1875.

U. S. circuit court.

THE UNITED STATES
vs.
M'R'S BESSIE GAUSSEN, EXECUTRIX OF J. K. Elgee. E. T. Parker, administrator, substituted. } No. 5922.

On motion of W. H. Hunt and Finney & Miller, of counsel for E. T. Parker, administrator of the succession of John K. Elgee, it is ordered that James F. Casey, collector of the port, do produce in court, on Monday morning, the 26th April, 1875, at 11 o'clock, on the trial of this cause, the letters and documents called for by the subpœna duces tecum heretofore issued and served upon said collector.

(Signed) W. B. W.

Affidavit.

UNITED STATES OF AMERICA,
District of Louisiana, ss:

179 E. T. Parker, administrator of the succession of J. K. Elgee, being duly sworn, deposes and says that the letters and documents referred to in the foregoing motions are material to the defendant to enable him to maintain his defence to this suit.

(Signed) E. T. PARKER.

Subscribed & sworn to before me this 22d day of April, A. D. 1875.

[L. S.] (Signed) R. H. SHANNON,
Comm'r U. S. Circuit Court & District of Louisiana.

Marshal's return on the foregoing motion & order.

Received, April 24th, 1875, by the U. S. marshal, and on same day, month, and year served a copy of within motion & order on J. R. Beckwith, named herein, by handing the same to him in person.

New Orleans, April 26th, 1875.

(Signed) S. W. REED,
D'y U. S. Marshal.

Affidavit of James F. Casey, collector.—Filed April 26th, 1875.

Circuit court of the United States, district of Louisiana.

THE UNITED STATES
vs.
M'R'S BESSIE E. GAUSSEN, TES'T'Y EX'X OF J. K. Elgee. E. T. Parker, administrator, substituted. } No. 5922.

DISTRICT OF LOUISIANA, *ss:*

James F. Casey, collector of customs for the port of New Or-
180 leans, being duly sworn, deposes and saith that the marshal of the United States for the district of Louisiana, through and by one of his deputies, caused to be served on him, as collector for the port of New Orleans, a certain rule of said circuit court, which is hereto attached, (and transcribed on pages 170 and 173 of this transcript.)

That he has in his individual possession none of the documents or papers named in said order; that he has caused due and diligant search for the same to be made among the documents and records belonging to the custom-house at the port of New Orleans in his possession, and that he has been and is unable to find any of the original documents, letters, or papers named in said order, and that he verily believes that no such original letters exist in said custom-house or in his possession or control as collector of the said port of New Orleans.

That all he has been able to find and discover are certain letter-press copy-books, purporting to contain letter-press copies of letters of the date referred to in said order.

That this deponent is unable to state whether said letters were ever transmitted to the address set forth in said letters respectively, and knows nothing in relation thereto, except that the same were found among the books and papers in said custom-house.

That he produced the same in court as the nearest possible
181 compliance on his part with the said order of the court in this behalf; and last, that he verily believes, if the original letters and papers named in said order are in existance, the same are, or should be, a part and portion of the Treasury of the United States at Washington, and in the custody and control of the proper officers thereof at Washington.

Thi*s* this deponent has no custody or control over the same; and he further saith that he has not in his possession, custody, and control either the original or any copy of any commission issued to the said Thomas Barrett as collector of customs; that the same is not of record in his said office; that the same was the private property of the said Barrett, and would legitimately be retained by him as his personal property or document. That the same is true of any letters addressed to him transmitting such commission or appointment; that the same are not to be found in the possession of this Department.

That for the purposes of the Government of the United States, the record of said appointment and commission of said Barrett, and the letter transmitting the same to him and his acceptance thereof, there is or should be a record thereof in the archives of the Government at Washington, but he has no personal knowledge thereof; that
182 the same is not in his custody and control, and he is unable to produce the same in the court as ordered. And further he saith not.

(Signed) JAMES F. CASEY.

Subscribed and sworn before me April 26th, 1875.
(Signed) F. A. WOOLFLEY,
Clerk U. S. Circuit Court.

Motion and order to produce books and papers.—Entered and filed April 27th, 1875.

U. S. circuit court.

UNITED STATES
vs.
M'R'S BESSIE GAUSSEN, EXECUTRIX, E. T. PARKER, administrator, substituted. } No. 5922.

On motion of Fenney & Miller, counsel for defendant E. T. Parker, administrator of the succession of John K. Elgee, and on suggesting that the following letters and circulars and books are essential to enable the defendant to maintain his defence to this suit, to wit:

All the circulars and letters addressed or issued by the officers of the Treasury Department to Dennis Prieur, T. G. Morgan, G. Dorsey, Thomas Barrett, D. O. Hincks, in their official capacity, and other officers of the customs in New Orleans, between the years 1837 and 1846, inclusive, and believed to be contained in various covers and clasps in the office of the collector of the customs of this port, marked vol. 17–19, 1840;
183 vol. 18–20, 1841; vol. 22, vol. 23, Heads of D'p'ts, 1842; vol. 26, 1843; vol. 29, vol. 31, book No. 32; letters from Heads of the Treasury Dep't, 1843.

The letter-book of Dennis Prieur, collector of the customs for 1845 and 1846.

The abstract-book showing abstract of accounts of Thomas Barrett, collector, with the United States, and abstracts of accounts of T. G. Morgan, collector, with the United States.

All of said letters, circulars, and books being on file in the office of and in the custody of the collector of the port.

It is now ordered that James F. Casey, collector of the port, do produce in court, on the service hereof, the aforesaid circulars, letters, books, herein described.

Order.

Let a subpœna duces tecum issue as prayed for.
W. B. WOODS, *Judge.*

New Orleans, April 27th, 1875.

Subpœna duces tecum.—Issued April 27th, 1875.

United States of America, circuit court of the United States for the fifth judicial circuit and district of Louisiana.

The President of the United States to James F. Casey, collector of customs:

You are hereby commanded to be and appear forthwith and to
184 bring with you all the circulars and letters addressed or issued by the officers of the Treasury Department to Dennis Prieur, T. G. Morgan, G. Dorsey, Tho's Barrett, D. O. Hincks, in their official capacity, and other officers of the customs in New Orleans, between the

years 1837 and 1846, inclusive, and believed to be contained in various covers and clasps in the office of the collector of the customs of this port, marked vol. 17, 19, 1840; vol. 18, 20, 1841; vol. 22, vol. 23, Heads of Dep'ts, 1842; vol. 26, 1843; vol. 29, vol. 31, book No. 32, letters from the Heads of the Treasury Dep'ts, 1843.

The letter-book of Dennis Prieur, collector of customs for 1845 and 1846.

The abstract-books showing abstracts of accounts of Thomas Barrett, collector, with the United States, and abstract of accounts of T. G. Morgan, collector, with the United States.

All of said letters, circulars, and books being on file in the office of and custody of the collector of the port, before the circuit court of the United States for the 5th circuit, in and for the said district, to be holden at the city of New Orleans forthwith, then and there to be used in evidence in a certain cause now pending therein, and to be tried between the United States and M'r's Bessie Gaussen, executrix, and herein fail not under penalty of two hundred and fifty dollars.

185 Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at the city of New Orleans, this 26th day of April, in the year of our Lord one thousand eight hundred and seventy-five, and in the 99th year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

Marshal's return thereon.

Received April 27th, 1875, by the U. S. marshal, and on same day served a copy of within subpœna duces tecum upon James F. Casey, collector, by handing the same to him personally in his office in the custom-house.

(Signed) J. B. STOCKTON,
D'p'y U. S. Marshal.

Note of evidence.—Filed April 28th, 1875.

UNITED STATES
vs.
M'R'S B. GAUSSEN, E. T. PARKER, ADMINISTRATOR, substituted. } No. 5922.

Plaintiff offers the Treasury transcript on file; also the bond filed 29th March, 1871.

W'm McQuoid, custom-house officer, sworn & examined.

Plaintiff offered the record-book of the collector from page 195.

186 Also, the cash-book of the collector's office.

Plaintiff specially offered the certified copies of the quarterly returns of Thomas Barrett, late collector to the Government, to be found in the transcript, viz:

Return from 25th July to 30th Sept., 1844.
Do. for the fourth quarter of 1844.
Do. " the first quarter of 1845.
Do. " the second quarter of 1845.
Do. " the third quarter of 1845.
Do. " the fourth quarter of 1845.

Plaintiff moves to strike out certain parts of the answer.

Motion argued and decision thereon reserved by the court.

Case adjourned till to-morrow.

Hearing and continuance of case.—Extract from the minutes of April 28th, 1875.

Circuit court of the United States, fifth circuit and district of Louisiana.
April term, 1875.

NEW ORLEANS, *Wednesday, April 28th*, 1875.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.

UNITED STATES
vs.
M'R'S B. E. GAUSSEN, EX'X, E. T. PARKER, ADMINISTRATOR, substituted. } No. 5922.

This cause was called for trial—
J. R. Beckwith, district attorney, for plaintiff; Finney & Miller and W. H. Hunt for defendant—
187 When the following jurors were called and sworn to try the issue:

1. M. Saragossa.
2. H. Gormley.
3. Tho's Hutchings.
4. Henry Yeager.
5. Jno. J. O'Brien.
6. Jno. Isham.
7. J. C. Miller.
8. Julius C. Hubbell.
9. Paul Boyd.
10. C. W. Foster.
11. Armand Bond.
12. Jno. Griffin.

And the jury being completed the trial proceeded, and after hearing the pleadings and evidence in part the cause is continued till to-morrow at 11 a. m., and the jurors were admonished to converse with no one on the subject-matter before them.

Motion to strike out, &c.—Extract from the minutes April 28th, 1875.

UNITED STATES
vs.
M'R'S B. E. GAUSSEN, EX'X, E. T. PARKER, ADMINISTRATOR, substituted. } No. 5922.

And now comes the plaintiff herein, by J. R. Beckwith, U. S. att'y, and moves the court now here, that all of said second alleged plea or defence of the said defendant, as is set forth in her said answer, and shown in the copy thereof annexed to this motion, and in the lines of said copy from 1 to 68, inclusive, of both said mentioned lines, be stricken from defendant's answer, and that said defendant be prohibited from
188 introducing any evidence tending to prove the said allegations in her said answer, the same not being, as pleaded, any defence to said plaintiff's demands.

And the said plaintiff also further moves the court that all and singular the allegations contained and set forth in said defendant's answer in this cause, as her said third several plea or defence, and given at large in the copy thereof attached to this written motion, from and including the 69th to the 95th line thereof, inclusive, be also stricken out, the same, if true, in no manner being a legal defence or bar to said plaintiff's action.

Order: continuance.—Extract from the minutes, April 29th, 1875.

UNITED STATES
vs.
M'R'S B. GAUSSEN, EX'X, E. T. PARKER, ADMINISTRATOR, substituted. } No. 5922.

This cause, continued from yesterday, was resumed, and, after hearing further argument on the motion to strike out certain portions of the answer, his honor reserved his decision upon the question, and directed the cause to be continued till to morrow at 11 a. m., and renewed his admonition to the jury to converse with no one, even among themselves, on the subject-matter before them.

189 *Order: motion to strike out sustained, and hearing and submission of cause.—Extract from the minutes, April 30th, 1875.*

UNITED STATES
vs.
M'R'S E. B. GAUSSEN, EX'X, E. T. PARKER, ADMINISTRATOR, substituted. } No. 5922.

This cause was resumed before the court and jury, when the court, for reasons assigned in writing, sustained the motion to strike out, and directed that all that part of the answer be stricken out as is prayed for in plaintiff's motion of the 28th April, 1875.

The trial thereupon proceeded, and, after hearing the evidence and argument and receiving a charge from the court, Henry Gormley was appointed foreman of the jury, and they retired to consider on their verdict.

And it being now 4 o'clock p. m., his honor directed the marshal to adjourn the court and keep the jury in charge, and, if necessary, provide them with food, and, in case of an agreement, they shall deliver to the clerk a sealed verdict, and be present in court next morning at the opening and reading of the same.

190 *Note of evidence.—Filed April 30th, 1875.*

UNITED STATES
vs.
M'R'S B. GAUSSEN & AL. } No. 5922.

Defendant offered document D, with accounts and endorsements thereon, (which will be found transcribed on pages 123 to 140, inclusive, in this transcript.)

It is admitted that Thomas Barrett died on the 31st May, 1846.

Verdict of the jury.—Extract from the minutes, May 1st, 1875.

THE UNITED STATES
vs.
M'R'S B. E. GAUSSEN, EX'X, & AL. }

The jury empanelled in this cause, having agreed upon their verdict, returned into court, and, in open court, delivered the same in due form, the said verdict being in writing, endorsed on the petition herein, and was in the words and figures following, to wit:

NEW ORLEANS, *May 1st*, 1875.

We, the jury, find a verdict for the plaintiff in the sum of thirty-six thousand eight hundred & fifteen $\frac{86}{100}$ dollars, ($36,815.86,) with interest at six per cent. from 12th October, A. D. 1845.

Whereupon it is ordered that the same be recorded.

191 *Bill of exceptions of defendants.—Filed May 4th*, 1875.

Circuit court of the United States for the fifth circuit and district of Louisiana.

THE UNITED STATES OF AMERICA
vs.
M'R'S BESSIE E. GAUSSEN, EXECUTRIX, AND E. T. Parkerer, public administrator. } No. 5922.

Be it remembered that afterwards, at a regular session of the said court, holding sessions at New Orleans, on the 30th day of April, of the April term of said court, A. D. 1875, this cause came on to be tried before the honorable W'm B. Woods, circuit judge, presiding in said court, and a jury duly empanelled.

When came also the United States, by J. R. Beckwith, U. S. att'y, as well *of* the said defendants, by Mess'rs Finney and Miller and W'm H. Hunt, their attornies, when, among other things, the following proceedings were had and taken, that is to say:

The said plaintiff, to establish and as tending to establish and prove the said issue on its part and its case, as alleged in the petition, first read to the jury in evidence the official bond of the said Thomas Barrett, as described in the petition, and the defendant having admitted the
192 signature to and executions of the bond sued upon, the same was admitted as evidence without objection.

The said plaintiff then called as a witness one McQuoid, who, being sworn, on oath stated that he was an officer or person employed in the custom-house at the port of New Orleans, and had charge and custody of the records of said custom-house, and then and there in court produced a part of the records of said custom-house, to wit:

A cash-book showing the debits and credits in and of the cash account in said custom-house as made and kept in said custom-house during the period of time while the said Barrett was collector of said port of New Orleans, which said book and cash account was given in evidence to the jury as so kept and recorded tended to prove a balance due from Barrett to the United States in the sum of $36,815.86, as stated in said book of cash account.

And he also produced and verified as being of the records of said custom-house a book in which there purported to be written an abstract of the collection and disbursements made by the said Barrett during the period which he held the office of collector of the port of New
193 Orleans, made at the time as the current operation of said custom-house, which was also given to the jury in evidence, and which abstract, as so written and recorded, tended to prove a balance of collections and receipts over disbursements by the said Barrett of the sum of $36,815.86.

The plaintiff then produced and read to the jury the certified transcript from the books and proceedings of the Treasury Department, duly certified, the same being annexed and made part of plaintiff's petition,

and is hereto attached as part of this bill, and marked "A," which said transcript, as certified, exhibited the adjustment of the accounts of the said Barrett as adjusted by the proper officers of the Treasury Department, and exhibited, as stated therein, the sum of $41,376.74 to be due from the said Barrett to the United States, as appears by an inspection thereof.

The plaintiff then offered and read in evidence to the jury the several certified copies of the several quarterly accounts purporting to be made by the said Barrett during his term of office as collector, two of them being signed, "D. O. Hincks, d'y collector," purporting to have been received at the Department on 12th May, 1846, which said copies of said quarterly accounts were and are added and annexed to and in-
194 cluded in the said transcript from the books & proceedings in the Treasury Department, and included in the same certificate, and made part of plaintiff's petition, and are included in said Treasury transcript marked "A."

And this concluded the proof and testimony given to the jury on the part of and by the plaintiff, and thereupon the plaintiff rested its case.

When the defendants produced and offered a certificate tending to prove that the said Thomas Barrett departed this life on the 30th day of May, A. D. 1846, when the plaintiff, by its attorney, then and there admitted that it was true that the said Thomas Barrett died on the 30th day of May, 1846, as alleged by the said counsel for defendant, and said admission was given to the jury as evidence of that fact, and the defendant thereupon rested their case.

That the above was all of the evidence and proof given and submitted to the jury by either the plaintiff or the defendant.

That after the said plaintiff had introduced said testimony on behalf of the said plaintiff, and before the defendant had offered any testimony except said certificate, and when defendant was about offering
195 testimony to support the answer, the said U. S. attorney, in behalf of the said plaintiff, addressed to the court the following motion, which said motion was in writing, and was in the words and figures following, to wit:

United States circuit court, district of Louisiana.

UNITED STATES
vs. } No. 5922.
M'R'S B. GAUSSEN, ADM'T'X, &c.

Ann now comes the plaintiff herein, by J. R. Beckwith, U. S. attorney, and moves the court now here that all of the said second alleged plea or defence of the said defendant, as set forth in her said answer, and shown in the copy thereof annexed to this motion in and on the lines of said copy, from 1 to 68, inclusive, of both said mentioned lines, be stricken from defendant's answer, and that said defendant be prohibited from introducing any evidence tending to prove the said allegations in her said answer, the same not being, as pleaded, any defence to said plaintiff's demand.

And the said plaintiff also further moves the court that all and singular the allegations contained and set forth in said defendant's
196 answer in this cause as her said third several plea or defence, and given at large in the copy thereof attached to this written motion, from and including the 69th to the 95th line thereof, inclusive, be also stricken out, the same, if true, in no manner being a legal defense or bar to said plaintiff's action.

[1] And further answering, defendant avers [2] that if said bond was ever executed, [3] delivered and took effect, which is not [4] admitted, then defendant avers that [5] said bond, after its execution, was rendered [6] void and null so far as said decedent [7] was concerned, for this, that subsequent [8] to its date, and during the period of [9] the term of office of Thomas Barrett as [10] collector of the port of New Orleans, the [11] United States imposed on and exacted [12] of him the performance of duties and [13] the assumption of responsibilities in [14] regard to the receipt, custody and disbursement [15] of the monies received in his said capacity [16] as collector aforesaid, different and [17] variant from those duties and res[18]ponsibilities in that regard legally [19] incumbent upon him as collector afore[20]said, at the date of said bond under the law [21] then existing and in force; that during [22] his said term of office said Barrett [23] was dispensed
197 by the United States [24] from his duty and obligation of paying [25] certain monies received by him in his [26] said capacity to the United States in [27] the mode required by law, and in lieu [28] thereof was required by the United States [29] to expend and disburse, and under [30] its orders he did actually expend and [31] disburse, during his said official term, [32] a large portion of said monies by [33] payments made to collectors and surveyors [34] of other collection districts and to various [35] other officers of the Government. That said [36] Barrett was required by the United States [37] to expend and disburse, and he did [38] in accordance with its orders expend [39] and disburse, during his said official [40] term, a large portion of said monies [41] for the construction of the new marine [42] hospital and for the maintainance [43] and supply of existing hospitals and [44] of light-houses and of vessels of the [45] revenue and naval services and for [46] other purposes entirely beyond the [47] scope of his duties as collector aforesaid, [48] and as fixed and defined by law. [49] That said Barrett was required by [50] the United States in his said capacity [51] as collector aforesaid to receive and [52] disburse, and did actually during his [53] said official term receive and disburse, [54] under its said require-
198 ments, large sums [55] of money which he was not required [56] by law to receive and disburse in his [57] said capacity as collector all of which [58] appears by the account filed by the plaintiff [59] herein And defendant charges that the [60] duties and risks and responsibilities [61] of said Barrett as collector aforesaid [62] without the consent of said decedent [63] were varied, enlarged and changed by [64] the United States, subsequent to the date [65] of said bond, and during his official [66] term, whereby the liability of said decedent [67] as surety upon said bond, if it ever [68] existed, was avoided and discharged.

[69] This defendant further avers [70] that the said Thomas Barrett departed [71] this life about the year 1846, in New [72] Orleans, leaving a large real and personal [73] estate, consisting in property and assets [74] more than sufficient to pay the amount [75] plaintiffs' demand; that if the United [76] States had a valid claim against said [77] Barrett it had the right of priority of [78] payment on such property and assets [79] which it neglected to enforce and lost. [80] That upon said bond are signatures [81] which purport to be those of Francois [82] Delery, Sylvain Peyraux, Lucien Hermann, [83] M. B. Cautrelle. That all of said parties [84] are dead. That each died leaving a [85] large and valuable estate, more than [86] enough to pay the amount claimed in
199 [87] this suit. That if the United States had [88] a valid claim against said Barrett and [89] said Francois Delery, Sylvain Peyroux, [90] Lucien Hermann, and M. B. Cautrelle, it [91] had the right of

priority of payment of [92] said demand and of each and all of said [93] estate which it neglected to enforce [94] and lost, whereby the liability of said J. K. [95] Elgee, if it ever existed, was discharged.

And the court then and there entertained the said motion, and, after argument of counsel in behalf of and against the said motion, did then and there allow and grant the same in manner and form as the same was made and presented, and did then and there rule and decide in the premises that all that portion of the said defendants' answer referred to and included in said motion, as in said answer pleaded, was, and is in law, insufficient, and if true in manner and form, as pleaded, to bar the said plaintiff's action, and constituted no legal defense thereto, and did then and there order that portion of defendants' answer to be stricken out as prayed for in said motion, and did decide that the defendants were not entitled to offer any evidence to the jury in support of allegation of said answer so stricken out as aforesaid.

200 To which said ruling and decision of the court in that behalf the said defendant, by said counsel, did then and there in open court except, and tendered to the court this bill of exception in that behalf, which is allowed, signed and *and* sealed by the judge at the close of this bill.

That afterwards, and after the plaintiff had offered the Treasury transcript and evidence already stated, the said transcript tending to prove that Barrett, while collector, claimed large credits for Treasury notes received by him in his said capacity, and defendant had given in evidence to the jury the said admission of the death of the said Thomas Barrett as hereinbefore in this bill stated and set forth; and after the evidence in the cause had been closed, and while the said jury were still in court, and before they had been given said cause in charge, and had retired to deliberate on their verdict, the said defendant's said counsel did then and there request and ask the said circuit judge to declare and deliver as his opinion and charge to the jury the following matter then and there submitted to the court by said counsel for defendant in

201 writing, as follows:

That if the jury find from the evidence that the Secretary of the Treasury required the said Barrett, while collector, to use the moneys received by him as collector in the redemption of Treasury notes of the United States, that such requirement was an important and material change of the duties, functions, and employment of the said Barrett as collector, as regulated by law, and whenever made discharged the sureties on his official bond from all liability for his subsequent official conduct.

Which charge the court refused to give; to which ruling and refusal to charge the defendant then and there excepted, and reserved his bill of exceptions, which is drawn out, signed, and sealed by the judge at the foot of this bill accordingly.

That afterwards, and after the plaintiff had given in evidence the Treasury transcript and the evidence already stated, said transcript tending to prove disbursements by Barrett, while collector, for marine hospital, light-houses, and revenue-cutter; and that money was sent to him from the Treasury, defendant had given in evidence to the

202 jury the said admission of the death of the said Thomas Barrett as hereinbefore in this bill stated and set forth, and after the evidence in the cause, as hereinbefore stated, had been closed, and while the said jury were still in court, and before they had been given said cause in charge and had retired to deliberate on their verdict, the said

defendant's said counsel did then and there request and ask the said circuit judge to declare and deliver as his opinion and charge to the jury these following matters then and there submitted to the court by said counsel for defendant, in writing, as follows:

That while Barrett, the principal in the bond sued on, held the office of collector, no law imposed on him the duty of making disbursements for any marine hospital, or for the light-houses or revenue-cutters, and that such duties and disbursements were extra-official as to the office of collector, and that the sureties on the bond sued on are not responsible for any fault, neglect, or misconduct of the said Barrett in respect to such extra-official disbursements; and if the jury find from the evidence that said Barrett, while he held said office, was employed by the
203 superior officers of the Department to make disbursements for the marine hospital, light-houses, and revenue-cutters; and that the said Barrett was furnished money directly from the Treasury of the United States, or from other sources than the proper receipts and collections of the office of collector; that in order to charge the defendant with the money thus furnished, or any part thereof, it is incumbent on the plaintiff to prove that the money thus furnished, or such part thereof, was necessary to cover the disbursements proper to the office of collector, or was furnished for that purpose.

Which charge the court refused to give; to which ruling and refusal to charge the defendants then and there excepted, and reserved his bill of exceptions, which is drawn out, signed, and sealed by the judges at the foot of this bill accordingly.

That afterwards, and after the plaintiff had given in evidence the Treasury transcript and evidence already stated, said transcript tending to prove that, while Barrett was collector, money had been sent to him from the Treasury, the defendant had given in evidence to the jury the said admission of the death of the said Thomas Barrett, as herein-
204 before in this bill stated and set forth, and after the evidence in the cause, as hereinbefore stated, had been closed, and while the said jury were still in court, and before they had been given said cause in charge and had retired to deliberate on their verdict, the said defendant's said counsel did then and there request and ask the said circuit judge to declare and deliver as his opinion and charge to the jury the following matters then and there submitted to the court by said counsel for defendant, in writing, as follows:

That if the jury find from the evidence that the Secretary of the Treasury caused to be remitted to Thomas Barrett, while collector, money out of the Treasury of the United States, and employed him as disbursing-officer of the Government in defraying the expenses of the light-house service, of the erection of the marine hospital at New Orleans, and in other matters not connected with his official duties as collector, as regulated by law, and extra-official as respects the office of collector, and in the accounts between the Government and the said Barrett, filed with the petition, there are mixed and blended together on the debit side of the account against said Barrett the monies received
205 by him officially for duties or imports, and from other sources from which he was by law authorized to collect, and monies remitted to him directly out of the Treasury of the United States; that in order to recover the balance brought down in the present action, it is incumbent on the Government to prove to the satisfaction of the jury that the said balance brought down resulted from the failure of the said Barrett to account for the funds which came into his hands as col-

lector, and within the scope of his official duties in that office, and his failure to perform his duty in respect to such funds, and not from his failure to account for funds received from the Treasury for extra-official purposes, and his failure to perform his duty in respect to such funds.

All of which the court refused to charge the jury, except that part beginning with the words "that in order to recover the balance brought down," and thence to the end of the charge as requested; to which ruling and refusal to charge the defendant then and there excepted, and reserved his bill of exceptions, which is drawn out, signed,
206 and sealed at the foot of this bill accordingly.

[L. S.] (Signed) W. B. WOODS, *Judge.*

J. R. B.

NEW ORLEANS, 30*th April*, 1875.

Judgment.—From judgment-book, May 6th, 1875.

Circuit court of the United States, fifth circuit and district of Louisiana.
April term, 1875.

NEW ORLEANS, *Saturday, May 1st*, 1875.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.

THE UNITED STATES
vs.
M'R'S B. E. GAUSSEN, EX'X, & AL. } No. 5922.

Considering the law and the verdict of the jury herein, and considering further, that although this action was brought against the succession of the said John K. Elgee, deceased, represented by the said M'r's Bessie E. Gaussen, executrix of the last will and testament of the said John Kingsbury Elgee, yet one E. T. Parker, in his capacity of public administrator of the State of Louisiana for the parish of Orleans, has appeared in this cause, and by written suggestion averred himself in his said capacity to lawfully represent said succession of the said
207 John Kingsbury Elgee, deceased, and has in his said capacity caused himself to be also made a party defendant in this cause, as appears by the record herein:

Now, therefore, on motion of Ja's R. Beckwith, U. S. attorney, it is by the court ordered, adjudged, and decreed that the said plaintiff, The United States of America, do have and recover of and against the said succession of the said John Kingsbury Elgee, and of the said M'r's Bessie E. Gaussen, as executrix of the last will and testament of the said John Kingsbury Elgee, as well as of and against the said E. T. Parker, in his said capacity of public administrator, representing the said succession as aforesaid, the full sum of thirty-six thousand eight hundred and fifteen dollars and eighty-six cents, with interest on said sum from the twelfth day of October, A. D. eighteen hundred and forty-five, at the rate of six per centum per annum until the same shall be paid, as damages, besides all of the costs of this suit to be taxed.

It is further ordered that this judgment be paid in the course of administration of the aforesaid estate, or that the plaintiff have
208 execution therefor against the property belonging to the said succession of the said John Kingsbury Elgee, deceased.

Judgment rendered May 1st, 1875.
Judgment signed May 6th, 1875.

(Signed) W. B. WOODS, *Judge.*

Motion for writ of error.—Entered and filed May 18th, 1875.

U. S. circuit court.

THE UNITED STATES
vs.
M'R'S BESSIE GAUSSEN, EXECUTRIX OF J. K. Elgee. } No. 5922.

On motion of Finney & Miller, of counsel for Mistress Bessie Gaussen, sued herein as executrix of John K. Elgee, and on suggesting that she is aggrieved by the final judgment herein rendered on the May, 1875, and signed on the 6th May, 1875, in favor of the plaintiff and against her and E. T. Parker, administrator of the succession of John K. Elgee; that she is advised that said judgment contains error to her prejudice, and she desires to take a writ of error from said judgment; it is now ordered that a writ of error herein be granted to the defendant, the mover, returnable to the Supreme Court of the United States on the 2d Monday of October, 1875.

209 Said writ to operate as a supersedeas and stay of execution upon said defendant and within the legal delay, furnishing bond conditioned as the law directs in the sum of one hundred and fifty-six thousand dollars, with good and sufficient sureties, approved by the court, or not to operate as a supersedeas upon said defendant within said delay furnishing bond in the sum of five hundred dollars, with good and sufficient sureties, to be approved by the court; that said writ be duly served, and that plaintiff be duly cited to answer said writ.

(Signed) W. B. WOODS, *Judge.*

Motion for writ of error.—Entered and filed May 18th, 1875.

U. S. circuit court.

UNITED STATES
vs.
MISTRESS BESSIE GAUSSEN, EXECUTRIX OF J. K. Elgee. } No. 5922.

On motion of Finney & Miller, of counsel for E. T. Parker, administrator of, and representing and acting herein on behalf of the succession of John K. Elgee, deceased, and on suggesting that said defendant is aggrieved by the final judgment herein rendered on the 1st May,

210 1875, and signed on the 6th May, 1875, in favor of plaintiff and against the succession of J. K. Elgee and E. T. Parker, in his capacity as administrator of said succession, for the sum of thirty-six thousand eight hundred and fifteen $\frac{86}{100}$ dollars, ($36,815$\frac{86}{100}$,) with interest and costs, and defendant is advised that said judgment contains error to his prejudice, and desires to take a writ of error from said judgment, it is now ordered that a writ of error herein be granted to defendant, and returnable to the Supreme Court of the United States on the 2nd Monday of October, 1875.

Said writ to operate as a supersedeas and stay of execution upon defendant within the legal delay, furnishing a bond conditioned as the law directs, in the sum of ($156,000) one hundred and fifty-six thousand dollars, with good and sufficient sureties, to be approved by the court, or not to operate as a supersedeas upon defendant within the legal delay, fur-

nishing bond in the sum of five hundred dollars; said bond with good and sufficient sureties, to be approved by the court; that said writ be duly served, and that the plaintiff be duly cited to answer said writ.

(Signed) W. B. WOODS, *Judge.*

211 *Bond for writ of error.—Filed July 5th,* 1875.

M'R'S BESSIE ELGEE GAUSSEN, EXECUTRIX OF John K. Elgee, dec'd, E. T. Parker, public administrator, substituted plaintiffs in error,
vs.
THE UNITED STATES, DEFENDANTS IN ERROR. } No. 5922.

Know all men by these presents that we, M'r's Bessie Gaussen, executrix of J. K. Elgee, as principal, and Duncan F. Kenner as surety, are held and firmly bound unto the United States of America in the full and just sum of five hundred dollars, to be paid to the said the United States of America, their certain attorney, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals, and dated this 3d day of July, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas, lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein the United States of Amer-
212 ica is plaintiff and Bessie E. Gaussen, executrix of J. K. Elgee, and E. T. Parker, administrator of the succession, are defendants, judgment was rendered against the said defendant, and the said defendant, Bessie E. Gaussen, executrix of J. K. Elgee, having obtained a writ of error and filed a copy thereof in the clerk's office of the circuit court to reverse the judgment of the aforesaid suit, and a citation directed to the said the United States, citing & admonishing the said United States to be and appear at a Supreme Court of the United States to be holden at Washington, the 2d Monday of October next:

Now, the condition of the above obligation is such, that if the said Bessie E. Gaussen, executrix, shall prosecute her writ to effect, and answer all damages and costs if she fails to make her plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) M'R'S BESSIE E. GAUSSEN, [L. S.]
Executrix,
By HENRY C. MILLER.
(Signed) D. F. KENNER. [L. S.]

Sealed and delivered in the presence of—

(Sign'd) HENRY C. MILLER,
" F. B. VINOT.

Approved.

(Signed) W. B. WOODS, *Judge.*

213 Duncan F. Kenner, the surety on the within bond, being duly sworn, says that he is worth the sum of five hundred dollars over and above his debts and liabilities and property exempt from execution.

(Signed) D. F. KENNER.

Sworn to and subscribed before me this 3d day of July, 1875.

(Signed) F. B. VINOT,
Commissioner of U. S. Circuit Court, District of La.

Bond for writ of error.—Filed July 5th, 1875.

M'R'S BESSIE ELGEE GAUSSEN, EXECUTRIX OF John K. Elgee, dec'd, E. T. Parker, public administrator, substituted, plaintiff in error,
vs.
THE UNITED STATES, DEFENDANT IN ERROR. } No. 5922.

Know all men by these presents, that we, E. T. Parker, administrator of the succession of J. K. Elgee, as principal, and Duncan F. Kenner, as surety, are held and firmly bound unto *unto* the United States of America in the full and just sum of five hundred dollars, to be
214 paid to the said United States of America, its certain attorney, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 3d day of July, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas, lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court wherein the United States of America is plaintiff, and Bessie E. Gaussen, executrix of J. K. Elgee, and E. T. Parker, administrator of the succession of J. K. Elgee, are defendants, judgment was rendered against the said E. T. Parker, administrator, and B. E. Gaussen, executrix, defendants; and the said defendant, E. T. Parker, administrator of the succession of J. K. Elgee, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said The United States of America, citing and admonishing the United States to be and appear at a Supreme
215 Court of the United States to be holden at Washington the 2nd Monday of October next.

Now, the condition of the above obligation is such, that if the said E. T. Parker, administrator of the succession of J. K. Elgee, shall prosecute this writ to effect, and answer all damages and cost if he fail to make plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) E. T. PARKER, [L. S.]
Adm'r of Suc'n J. K. Elgee.
(Signed) D. F. KENNER. [L. S.]

Sealed and delivered in the presence of—
(Sig'd) HENRY C. MILLER.
(Sig'd) F. B. VINOT.

Approved:
(Signed) W. B. WOODS, *Judge.*

Duncan F. Kenner, the surety on the within bond, being duly sworn, says that he is worth the sum of five hundred dollars over and above his debts and liabilities and property exempt from execution.
(Signed) D. F. KENNER.

Sworn to and subscribed before me this 3d day of July, 1875.
F. B. VINOT,
Comm'r of U. S. Circuit Court District of Louisiana.

216 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 215 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of The United States versus M'r's Bessie Elgee Gaussen, wife of Edmond I. Gaussen, executrix of the last will & testament of her father, John Kingsburn Elgee, deceased, E. T. Parker, public administrator, substituted, No. 5922 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 26th day of August, A. D. 1875.

[SEAL.] F. A. WOOLFLEY,
Clerk.

I, W. B. Woods, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 26th day of August, A. D. 1875.

W. B. WOODS,
Judge.

217 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between the United States of America and M'r's Bessie Elgee Gaussen, wife of Edmond I. Gaussen, executrix of the last will and testament of her father, John Kingsbury Elgee, deceased, defendant, No. 5922 of the docket of the said court, E. T. Parker, public administrator, substituted, a manifest error hath happened, to the great damage of the said M'r's Bessie Elgee Gaussen, executrix, &c., as by her complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this 18th day of May, in the year of our Lord one thousand eight hundred and seventy-five.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) United States circuit court. No. 5922. M'r's Bessie Elgee Gaussen, executrix of J. K. Elgee, deceased, plaintiff in error, versus The United States of America, defendants in error. Writ of error. Filed May 18th, 1875. F. B. Vinot, d'y cl'k.

218 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between the United States of America and M'r's Bessie Elgee Gaussen, wife of Edmond I. Gaussen, executrix of the last will and testament of her father, John Kingsbury Elgee, deceased, defendant, No. 5922 of the docket of the said court, E. T. Parker, public administrator, substituted, a manifest error hath happened, to the great damage of the said E. T. Parker, in his capacity of administrator of the succession of John K. Elgee, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this 18th day of May, in the year of our Lord one thousand eight hundred and seventy-five.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) United States circuit court. No. 5922. M'r's Bessie Elgee Gaussen, executrix of John K. Elgee, dec'd, E. T. Parker, public administrator, substituted, plaintiff in error, versus The United States, defendants in error. Writ of error. Filed May 18th, 1875. F. B. Vinot, d'y cl'k.

219 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein M'r's Bessie Elgee Gaussen, wife of Edmond J. Gaussen, executrix of the last will and testament of her father, John Kingsbury Elgee, deceased, E. T. Parker, public administrator, substituted, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said E. T. Parker in his capacity of adm'r, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 18th day of May, in the year of our Lord one thousand eight hundred and seventy-five.

W. B. WOODS,
U. S. Judge.

220 (Indorsed:) United States circuit court. No. 5922. M'r's Bessie Elgee Gaussen, executrix of John K. Elgee, dec'd, E. T. Parker, public administrator, substituted, plaintiff in error, vs. The United States, defendants in error. Citation.

Marshal's return.

Received May 19, 1875, by the U. S. marshal, and on the 7th day of June, 1875, served a copy hereof on the United States of America, by handing it to J. R. Beckwith, their attorney, in person, in this city.

New Orleans, June 7, 1875.

S. W. REED,
D. U. S. Marshal.

On this seventh day of June, 1875, personally came and appeared before me, the subscriber, S. W. Reed, a deputy marshal for the district of Louisiana, who, being duly sworn, declared that on this seventh day of June, 1875, he served a copy of the within citation on the United States of America, by handing the same to J. R. Beckwith, their attorney for the district of Louisiana, as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me this 7th day of June, 1875.

F. B. VINOT,
Com'r of the U. S. Circuit Court, Dist. of La.

221 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein M'r's Bessie Elgee Gaussen, wife of Edmond J. Gaussen, executrix of the last will and testament of

her father, John Kingsbury Elgee, deceased, plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said M'r's Bessie Elgee Gaussen, executrix, &c., as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 18th day of May, in the year of our Lord one thousand eight hundred and seventy-five.

W. B. WOODS,
U. S. Judge.

222 (Indorsed:) United States circuit court. No. 5922. M'r's Bessie Elgee Gaussen, executrix of J. K. Elgee, dec'd, plaintiff in error, vs. The United States of America, defendants in errror. Citation.

Marshal's return.

Received May 19, 1875, by the U. S. marshal, and on the 7th day of June, 1875, served a copy hereof on the United States of America, by handing it to J. R. Beckwith, their attorney, in person, in this city.

New Orleans, June 7, 1875.

S. W. REED,
D'y U. S. Marshal.

On this seventh day of June, 1875, personally came and appeared before me, the subscriber, S. W. Reed, a deputy marshal for the district of Louisiana, who, being duly sworn, declared that on this seventh day of June, 1875, he served a copy of the within citation on the United States of America, by handing the same to J. R. Beckwith, their attorney for the district of Louisiana, as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me this 7th day of June, 1875.

F. B. VINOT,
Com'r of the U.S. Circuit Court Dist. of L'a.

(Indorsement on cover:) No. 222. M'r's Bessie Elgee Gaussen, wife of E. J. Gaussen, executrix of John Kingsbury Elgee, deceased, E. T. Parker, public administrator, substituted, plaintiffs in error, vs. The United States. Louisiana C. C. U. S. Filed 15th October, 1875.

Supreme Court

OF THE UNITED STATES.

MRS. BESSIE ELGEE GAUSSEN, WIFE OF E. J. GAUSSEN, EXECUTRIX OF JOHN KINGSBURY ELGEE, DECEASED, E. T. PARKER, PUBLIC ADMINISTRATOR, SUBSTITUTED,
PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

History of the Case. Statement, and Points on behalf of the Plaintiffs in Error.

New-York:
HENRY BESSEY, LAW PRINTER,
No. 47 CEDAR STREET.

1878.

Supreme Court of the United States.

MRS. BESSIE ELGEE GAUSSEN, Wife of E. J. GAUSSEN, Executrix of JOHN KINGSBURY ELGEE, deceased, E. T. PARKER, Public Administrator, substituted, Plaintiffs in Error,

vs.

THE UNITED STATES.

History of the Case, Statement, and Points on behalf of the Plaintiffs in Error.

PRELIMINARY HISTORY OF THE CASE.

This action having been tried twice in the Court below, and having been already once before this Court, a brief history of the proceedings should be given at the outset.

The suit was commenced June 26, 1869, by filing a petition in the Circuit Court of the United States for the District of Louisiana. In that action the defendant was sued as Executrix of her father, John K. Elgee, deceased, who, in his lifetime, was a citizen and resident of New-Orleans.

The gravamen of the action was the alleged liability of John K. Elgee, the defendant's testator, as surety

on the official bond of one Thomas Barrett. The petition sets forth that, on or about the 6th of July, 1844, Barrett was appointed by the President of the United States to the office of collector of customs for the District of New-Orleans; that on the last named date he executed a bond in the penal sum of $120,000, conditioned for the faithful performance of the duties of said office according to law; and that the testator, Elgee, together with three others, signed the bond as sureties.

The breach of the condition is alleged to be the failure and neglect of Barrett "faithfully to account "for and pay over to the petitioners the money by him "received for the petitioners, in his official capacity as "aforesaid." The petition avers, inferentially at least, that the breach of the bond accrued on the 12th of October, 1845; it being alleged that on that day the accounts of Barrett, as collector, were adjusted by the proper officers of the Treasury of the United States, and a balance of $41,376\frac{64}{100}$ found due and owing by Barrett to the petitioners. (Record, p. 1, folio 3.) An alleged certified statement of the accounts showing this balance is annexed to and made part of the petition. It is for the recovery of this alleged balance that the suit was instituted.

On January 11, 1870, the defendant filed her answer. This answer "denies all and singular all the allegations" of the petition, except such as were thereinafter specially admitted. It also alleged ignorance of the defendant as to the genuineness of the signature of Elgee to the bond, and called for strict proof thereof. No question is now in controversy on this latter point.

The answer then alleges several distinct grounds of defence, which will be more fully stated hereafter when the exceptions taken on the second trial, and which are now before this Court, are discussed.

It may be well to state, that it is inferable from the

record that Barrett entered upon the duties of the office of collector on the 6th of July, 1844, the date of the bond; and that his connection with the office ceased on the 12th of October, 1845. His term of office, therefore, extended over a period of one year, three months and fifteen days. He died May 30th, 1846. (Record p. 80, fol. 194.) So far as this record discloses, there appears to have been no demand, movement, correspondence, or conference touching the balance now alleged to be due under the bond in question, or in relation to Barrett's liability, or the liability of any of the sureties prior to the commencement of this suit. The whole period of nearly a quarter of a century between the last entry and the alleged adjustment of the account, and the bringing of this suit, is a blank. During that time, not only the principal, but all the sureties had died; the latter all, except defendant's testator, who was a man of large wealth till 1861, leaving large estates.

But a small portion of this long period of time was covered by the disturbing events of the rebellion. As already stated, the breach of the bond is alleged in the petition as having accrued October 12th, 1845, and the adjustment of the accounts by the proper officers of the Treasury is averred to have been made, and the balance due ascertained on that date. It should be added, however, that these accounts appear to have been manipulated by the officers of the Treasury after that date. Various certificates thereto attached, bear widely different dates, viz.: September 5th, 1846, (Record, p. 28, fol. 66,) May 17th, 1848, (Record, p. 42, fol. 102,) July 31st, 1848, (Record, p. 43, fol. 104,) May 13th and 26th, 1848, (Record, p. 48, fol. 118,) the last being May 25th and 30th, 1854, (Record, p. 50, fol. 123.) These last entries are eight years after the death of Barrett, and fifteen years before this suit was commenced.

On the 29th of March, 1871, the case was brought to trial before the District Judge, holding the Circuit

Court, and a jury. On that trial certain evidence, including the transcript of accounts, was offered by the plaintiff, objected to by the defendant, and ruled out by the Court. The questions thus raised in that stage of the case will be found in the present Record, pp. 64–66, folios 156–162, inclusive.

The jury having returned a verdict for the defendant, the case was brought before this Court on writ of error, and heard and decided at the October Term, 1873. This Court held that the rejection of the evidence offered by the plaintiffs was error, reversed the judgment, and ordered a new trial. (United States *vs.* Gaussen, 19 *Wall.* 198.)

The questions thus disposed of by this Court do not arise, at least not in the same form, in the present stage of the case, and it is, therefore, unnecessary to dwell here on the rules laid down in the opinion.

The mandate of this Court, reversing the judgment and ordering a new trial, was filed in the Court below January 27th, 1875. (Record, pp. 68, 69, folios 168, 169, 170.) April 13th, 1875, Parker, Public Administrator, was made a party defendant. (Record, pp. 71, 72, folios 174, 175.)

On the 28th of April, 1875, the case was brought to a second trial before the Circuit Judge and a jury. After the jury were empanneled, and after the plaintiffs had rested their case, and when the defendants were about offering their testimony, the plaintiffs' counsel moved to strike out nearly the whole of the answer, which motion was granted by the Court. (Record, p. 80, folios 194, 195.) This ruling, and the other material features of this trial, will be fully considered hereafter. The jury rendered a verdict for the plaintiffs for $\$36{,}815\frac{86}{100}$, with interest at six per cent. from October 12th, 1845; being, in effect, a verdict for over $101,000. (Record, pp. 78, 79, folio 190.)

The defendants, plaintiffs in error, have now brought the Record before this Court.

This Record presents a somewhat peculiar aspect. On the first trial the plaintiffs were not permitted to offer any evidence. On the second trial the whole answer of the defendants, except what was embraced in the general issue, occupying less than two lines, and the allegation of ignorance of the genuineness of the alleged signature of Elgee, was stricken out by the Court on motion of plaintiffs' counsel, made after the jury were empanneled, and after the plaintiffs had rested their case. The first trial was, therefore, without evidence, and a verdict for the defendant followed as of course. The second was without evidence or pleading, except the general issue, on the part of the defendant, and a verdict for the plaintiffs for over $100,000 followed in legitimate sequence. The vivid contrast presented by these alternate phases and results of the litigation thus far may be a striking illustration of what the transcendental philosophers call the "law of compensation;" but, as an illustration of practical justice, as administered in courts of law, dealing with transactions occurring thirty years ago, the actors in which have all long been dead, the result is somewhat appalling, as well as striking. A careful scrutiny of the questions presented by the present bill of exceptions would seem, therefore, to be appropriate and imperatively demanded.

It is not to be presumed that any court of justice will look with indifference upon such a result, in view of the facts disclosed by this record.

STATEMENT.

The material allegations of the plaintiffs' petition have already been pointed out, unless the long and complicated account, or series of accounts, annexed to and filed with the petition, are to be deemed allegations. So far as these accounts bear on the questions now before this Court, they will be referred to hereafter.

For greater convenience, we insert the whole answer here, with those parts which were stricken out, numbered and printed in italics :

ANSWER.

"The defendant herein, sued as executrix of the last will "and testament of John K. Elgee, deceased, for answer to "the plaintiffs' petition, denies all and singular the allega- "tions therein contained not hereinafter specially admitted.

"The defendant avers that she does not know whether the "alleged signature of the decedent, John K. Elgee, to the "bond sued upon (is) genuine or not, and she requires strict "proof of its genuineness.

"(1.) *And, further answering, defendant avers that if "said bond was ever executed, delivered and took effect, "which is not admitted, then defendant avers that said "bond, after its execution, was rendered void and null, so "far as said decedent was concerned, for this, that sub- "sequently to its date, and during the period of the term of "office of Thomas Barrett as collector of the port of New- "Orleans, the United States imposed on and exacted of him "the performance of duties and the assumption of responsi- "bilities in regard to the receipt, custody and disbursement of "the moneys received in his said capacity as collector afore- "said, different and variant from those duties and responsi- "bilities in that regard legally incumbent upon him as "collector aforesaid at the date of said bond, under the law "then existing and in force.*

"(2.) *That during his said term of office said Barrett "was dispensed, by the United States, from his duty and "obligation of paying certain moneys received by him in "his said capacity to the United States, in the mode required "by law, and, in lieu thereof, was required by the United "States to expend and disburse, and, under its orders, he did "actually expend and disburse, during his said official term, "a large portion of said moneys by payments made to col- "lectors and surveyors of other collection districts, and to "various other officers of the Government.*

" *That said Barrett was required by the United States to* " *expend and disburse, and he did, in accordance with its* " *orders, expend and disburse, during his said official term,* " *a large portion of said moneys for the construction of the* " *new marine hospital, and for the maintainance and supply* " *of existing hospitals and light houses, and of vessels of the* " *revenue and naval service, and for other purposes entirely* " *beyond the scope of his duties as collector, aforesaid, and* " *as fixed and defined by law.*

" (3.) *That said Barrett was required by the United* " *States, in his said capacity as collector, aforesaid, to re-* " *ceive and disburse, and did actually, during his said official* " *term, receive and disburse, under its said requirements,* " *large sums of money, which he was not required by law* " *to receive and disburse in his said capacity as collector,* " *all of which appears by the account filed by the plaintiffs* " *herein; and defendant charges that the duties and risks* " *and responsibilities of said Barrett, as collector aforesaid,* " *without the consent of said decedent, were varied, enlarged* " *and changed by the United States, subsequent to the date* " *of said bond, and during his official term, whereby the* " *liability of said decedent as surety upon said bond, if it* " *ever existed, was avoided and discharged.*

" (4.) *This defendant further avers, that the said Thomas* " *Barrett departed this life about the year* 1846, *in New-* " *Orleans, leaving a large real and personal estate, consist-* " *ing in property and assets more than sufficient to pay the* " *amount of plaintiffs' demand. That if the United States* " *had a valid claim against said Barrett, it had the right of* " *priority of payment on such property and assets, which it* " *neglected to enforce and lost. That upon said bond are* " *signatures which purport to be those of François Delery,* " *Sylvian Peyroux, Lucien Hermann, M. B. Cautrelle;* " *that all of said parties are dead; that each died leaving* " *a large and valuable estate—more than enough to pay the* " *amount claimed in this suit; that if the United States* " *had a valid claim against said Barrett and said Fran-* " *çois Delery, Sylvian Peyroux, Lucien Hermann and M.* " *B. Cautrelle, it had the right of priority of payment of* " *said demand out of each and all of said estates, which it*

" neglected to enforce and lost, whereby the liability of said " J. K. Elgee, if it ever existed, was discharged.

" Wherefore the defendant prays for judgment in her " favor, that the plaintiffs' demand be dismissed, with costs, " that this cause be tried by a jury, and for general relief."

From this it will be seen that material parts of the answer were stricken out. Scarcely any thing was left except the caption, the general issue and the conclusion, or prayer for judgment.

It is proper to note precisely under what circumstances this was done. This the bill of exceptions shows. This document will be found in the Record at pp. 79–84. In the latter part of folio 194, and in the beginning of folio 195, the Record states, after the plaintiffs had introduced all their testimony and rested their case, and after the defendants had introduced a single item of evidence to prove the date of Barrett's death, "and when the defendants were " about offering testimony in support of the answer, " the said U. S. Attorney, in behalf of the said plaintiff, " addressed to the Court the following motion, which " said motion was in the words and figures follow- " ing, to wit :" This motion was, that all that part which is printed in italics above, "be stricken from " defendant's answer, and that said defendant be " prohibited from introducing any evidence tending " to prove the said allegations in her said answer, " the same not being, as pleaded, any defence to the " said plaintiffs' demand." (Record, p. 80, folio 195.)

The Court granted the motion, and "did decide " that the defendants were not entitled to offer any " evidence to the jury in support of (any) allegation " of said answer so stricken out as aforesaid." (Record, p. 82, folio 199.) Exception was of course taken. (Record, p. 82, folio 200.)

The grounds of defence being thus struck from under their feet, counsel had nothing left but to

request the Court to charge in accordance with certain propositions, which they proceeded to do, in writing, and while the jury were still in Court, and before they had been given in charge of the cause. (Record, p. 82, folio 200.)

The first request to charge was as follows:

"That if the jury find from the evidence that the Secre-
"tary of the Treasury required the said Barrett, while col-
"lector, to use the money received by him as collector in
"the redemption of Treasury notes of the United States,
"that such requirement was an important and material
"change of the duties, functions and employment of said
"Barrett as collector, as regulated by law, and whenever
"made, discharged the sureties on his official bond from all
"liability for his subsequent official misconduct." (Record, p. 82, folio 201.)

This request was refused.

Before stating the other requests and refusals to charge, it is proper to remind the Court, that the Treasury accounts with Barrett, which were made part of the plaintiffs' petition and evidence, as well as the accounts signed by Barrett, and by Hincks, the deputy collector, contain numerous items which apparently do not relate to the business or duties of the office of "collector of the customs for the district of New-Orleans in the State of Louisana," the office to which the bond sued on alone relates. These items are numerous, and embrace among other things the payment of salaries of collectors of other districts, contracts for supplies and for disbursements in the light-house service, and the revenue cutter service, large expenditures for the erection of a new marine hospital, the business of redeeming and cancelling treasury notes, and the receipt directly from the Treasury at Washington of a large amount of money for these purposes, or for others having no relation to the duties of collectors of customs as defined by

law. These items will receive a particular consideration hereafter.

The second request to charge was as follows:

"That while Barrett, the principal in the bond sued on, "held the office of collector, no law imposed on him the duty "of making disbursements for any marine hospital, or for "the light house or revenue cutters, and that such duties "and disbursements were extra-official, as to the office of "collector, and that the sureties on the bond sued on are "not responsible for any fault, neglect or misconduct of the "said Barrett in respect to such extra-official disbursements; "and if the jury find from the evidence that said Barrett, "while he held said office, was employed by the superior "officers of the department to make disbursements for the "marine hospital, light houses and revenue cutters, and that "said Barrett was furnished money directly from the Treas- "ury of the United States, or from other sources than the "proper receipts and collections of the office of collector, "that, in order to charge the defendant with the money "thus furnished, or any part thereof, it is incumbent on the "plaintiff to prove that the money thus furnished, or such "part thereof, was necessary to cover the disbursements "proper to the office of collector, or was furnished for that "purpose." (Record, pp. 82, 83, folios 202, 203.)

This request was refused, and exception taken.

The next and last request to charge was as follows:

"That if the jury find, from the evidence, that the "Secretary of the Treasury caused to be remitted to Thomas "Barrett, while collector, money out of the Treasury of the "United States, and employed him as disbursing officer of "the Government in defraying the expenses of the light- "house service, of the erection of the marine hospital at "New-Orleans, and in other matters not connected with "his official duties as collector, as regulated by law, and "extra-official as respects the office of collector; and in the "accounts between the Government and said Barrett, filed

" with the petition, there are mixed and blended together on " the debit side of the account against said Barrett [with] " the monies received by him officially for duties on imports, " and from other sources from which he was by law au- " thorized to collect, and monies remitted to him directly " out of the Treasury of the United States. *That in order* " *to recover the balance brought down in the present action,* " *it is incumbent on the Government to prove to the satis-* " *faction of the jury that the said balance brought down re-* " *sulted from the failure of the said Barrett to account for* " *the funds which came into his hands as collector, and within* " *the scope of his official duties in that office, and his fail-* " *ure to perform his duty in respect to such funds, and not* " *from his failure to account for funds received from the* " *Treasury for the extra-official purposes, and his failure to* " *perform his duty in respect to such funds.*"

The Court refused every part of this request except that above printed in italics, to which refusal the defendants excepted.

Verdict and judgment then went for the plaintiff, and the questions arising on the record have been brought before this Court for its consideration.

Assignment of Errors.

1. Those parts of the answer of the defendant which were stricken out, were good in point of form, and contained matter legally pertinent to the defence, and sufficient in law if established by proof. It was error, therefore, on the part of the Court to strike them out.

2. The first request of defendant's counsel was good in point of law, and it was error on the part of the Court not to charge accordingly.

3. But however that may be, the second request was manifestly good in law, and in every respect needful and proper in order to enable the jury to understand the principles of law that should govern their verdict. In refusing to charge as so requested, the Court in effect informed the jury that the law was not as stated in the request to charge, and, by necessary inference, that the defendant was in law liable for the items of receipts and disbursements having no

relation to his duties as collector, and therefore, that the defendant was liable in point of law for items of this class appearing in the accounts. This was error.

4. It was error not to charge in accordance with the third request. This error was not cured by eliminating a paragraph from the request, and charging that, omitting the explanatory and instructive portion. Moreover, from the refusal to charge in accordance with the second request, the jury were bound to infer that the abstract principles of the charge had no practical bearing upon the case, and that all the items in the accounts presented were a proper charge against the surety, *because the Court had distinctly refused to charge that any of them were not.*

This was error.

5. Having regard to what had preceded as above set forth, it was error on the part of the Court to charge only a part of the third request, the same being as follows:

"That in order to recover the balance brought down in the "present action, it is incumbent on the Government to prove "to the satisfaction of the jury that the said balance brought "down resulted from the failure of the said Barrett to account "for the funds which came into his hands as collector, and "within the scope of his official duties in that office, and his "failure to perform his duty in respect to such funds, and "not from his failure to account for funds received from "the Treasury for the extra-official purposes, and his failure "to perform his duty in respect to such funds."

This assignment rests upon considerations already presented under the 4th assignment.

6. The case was tried upon an undisputed state of facts, standing in this respect in the situation of an agreed case. The evidence consisted of the account of the Government and the account of the deceased collector. The nature of the items and their legal relation to the official duties of the collector, *as collector*, plainly appear. It also plainly appears that the collector's account embraces many items for which his surety was not liable. *It also plainly appears that the jury embraced these latter items in*

their verdict. It follows, that the verdict is erroneous in point of law, being founded upon manifestly erroneous principles. The error consists in the application of erroneous legal rules to the agreed facts. If the case had been tried by the Court without a jury, and this error had appeared, it would be fatal. It is none less so because the triers were jurors; this circumstance relates merely to the form, not the substance of the trial of causes. Whether this error was occasioned by the judge's charge, or refusal to charge, it is equally erroneous; and this plainly appearing by the Record, there must be a new trial, that the case may go the jury with proper instructions.

POINTS.

I.

It will not be forgotten, that the aim of this action is to subject the estate of a surety. It is brought on a contract of surety, and is to be decided by those rules which govern the relation of a surety to the party demanding the fulfilment of the obligation. The contract of a surety is *strictissimi juris*, and neither Courts of equity nor law will enforce responsibilities on the surety which are not within the terms of his engagement. It is unnecessary to cite to this Court authorities in support of this well settled doctrine, which has been repeatedly illustrated by its own decisions. We may be excused, however, for quoting some apt remarks of Spencer, J., on this subject:

> "It has been correctly urged that sureties are favorites of "Courts of Equity, and that those Courts will not bind them "where they are not strictly bound at law. It may, in the "same sense, be said, that they are favorites of Courts of "law, and that there they will not be bound beyond the

"scope of their engagements. These maxims, if I may so "call them, grow out of the consideration that, in the "various transactions of life, men are liable to be called on "to render acts of neighborly kindness, without any inter- "est or expectation of reward; that they are frequently "called on to become bail, endorsers of notes, guarantees "in various modes, and when, in such cases, the principal "turns out to be insolvent, it becomes a question which of "the two innocent parties shall sustain a loss. Both Courts "of equity and law will cast the responsibility on the "surety, if, by the *terms* of his engagement, he has assumed "it; but neither of them will do this where he is not "brought within the precise scope of his undertaking.

"The authorities on this subject are very uniform; they "speak a language not to be misunderstood, and, without de- "taining the Court by an enumeration of them, I am fully "justified, by those cited, in saying that, both in law and "equity, contracts, involving the rights of sureties, will, so "far as respects *them*, receive a more rigid and less liberal "construction than between the original contracting parties." (Ludlow *vs.* Simonds, 2 *Caines' Cases in Error*, pp. 1, 29.)

See, also, Opinion of Thompson, J., in U. S. *vs.* Tillotson, 1 *Paine*, pp. 305–329.

"Nothing can be clearer, both upon principle and au- "thority, than the doctrine that the liability of a surety is "not to be extended by implication beyond the terms of "his contract. To the extent, and in the manner, and "under the circumstances, pointed out in his obligation, he "is bound, and no further." (Miller *vs.* Stewart, 9 *Wheat.*, pp. 680, 702.)

Nor does the fact that the United States are the obligees of the bond change the rules of law applicable to the contract of surety. Sureties, as defendants, in suits in which the Government is a party, are under no other or different disabilities than are other defendants who may be sued by the United States. The latter are exempt from the imputation of the laches of their agents, and from the operation of Statutes of Limitations which may be interposed

as a bar to stale claims made by private suitors. These exemptions affect sureties to precisely the same extent as other litigants, and no further. In other respects, they are entitled to have the same rules of law applied to their contracts when the United States are the obligees in the bond, and plaintiffs seeking to enforce its conditions, as are applied to the same relation between them and other private persons. The United States have no prerogative rights in the premises. The exemption of the Government from both the legal consequences of laches and lapse of time "is founded, not in the no- "tion of extraordinary prerogative, but upon a great "public policy." (United States *vs.* Kirkpatrick, 9 *Wheaton*, p. 735.)

Therefore, the English doctrine stated in *Theobald on Surety*, that "Prerogative overrides all equities," has no place in the jurisprudence of this country.

Ordinarily, acts which, if done by a private person or corporation, being the obligee of a bond conditioned for the faithful performance of a duty, will discharge the surety, will equally discharge him where the acts are done by the United States under the same circumstances.

U. S. *vs.* Hillegas, 3 *Wash.* 70.
U. S. *vs.* Kirkpatrick, 9 *Wheaton*, 720.
U. S. *vs.* Tillotson, 1 *Paine*, 305.

The last case cited afterwards came before this Court and was reversed, but the reversal was on a ground having no relation to the point now under consideration.

U. S. *vs.* Tillotson, 12 *Wheat.* 180.

II.

The first question in order is, whether the Court below erred in granting the motion of the U. S. At-

torney, striking out almost the whole answer, and denying the right of the defendants to prove any of the facts alleged therein. The motion itself, and the decision of the Court, cover both branches of this question. After the motion to strike out these parts of the answer had been granted, and the right to offer any evidence in support of the facts therein alleged denied, the defendants were barred from making any available defence, even under the general issue.

In considering the nature and legal effect of the averments stricken out, the terms of the condition of the bond should be kept in view. They are as follows:

"The condition of the foregoing obligation is such, that "whereas, the President of the United States hath, pursuant "to law, appointed the said Thomas Barrett to the office of "collector of the customs for the District of New-Orleans, "in the State of Louisiana:

"Now, therefore, if the said Thomas Barrett has truly "and faithfully executed and discharged, and shall continue "truly and faithfully to execute and discharge, all the "duties of said office, according to law, then the above ob-"ligation to be void and of none effect; otherwise it shall "remain in full force and virtue." (Record, pp. 2, 3, folios 5, 6.)

The bond and the condition are in conformity to the requirements of the act of March 2, 1799. (1 *Stats. at Large*, p. 704, Sec. 1.)

The breach relied on is stated as follows:

"That said Thomas Barrett altogether failed and neglected "faithfully to perform all the duties of said office according "to law; and particularly in this, that he failed and neg-"lected faithfully to account for and pay over to the peti-"tioners the money by him received for the petitioners in "his official capacity as aforesaid." (Record, p. 1, folio 3.)

This allegation is very general in its terms. Aware of this, evidently, the pleader attempted to supple-

ment it, by annexing the transcripts of the Treasury accounts, and making them a part of his petition. Taken in connection with the general averments, they may, under the liberal rules of pleading in Louisiana, be deemed special allegations setting forth in detail the acts and omissions of Barrett, which constitute the elements of his alleged breach of the condition of the bond. The general debit sides of these respective accounts contain the gross sums with which he was charged. The detailed items, as they appear in the numberless entries of "additions," "deductions," "disallowances," "suspensions," and miscellaneous observations made by the numerous accounting officers of the Treasury in the different bureaus of that department of the Government, reveal with considerable clearness the various services required of the collector, and the way in which, and objects for which, he was directed to disburse the public moneys. From an inspection of these entries, it will be seen that Barrett was employed by the United States as purchasing agent and disbursing officer, not only in regard to matters necessarily and appropriately connected with and relating to the "office of Collector of the Customs for the District of New-Orleans," but with reference to various other and different branches of the public service. Some of these entries, as already stated, are for the following:

Disbursements for the Light-House Service.
Disbursements and supplies for Revenue Cutters.
Disbursements for building a new Marine Hospital.

There are other items in the accounts which apparently have nothing whatever to do with the office of collector; such as redemption of Treasury notes, the payment of bills of fees of District Attorneys, and the payment of the salaries of officers of other districts. It is true that many or all that class of items, referred to above, appear in the accounts of Barrett,

which the plaintiffs put in evidence. But this is not material, for the principal in a bond can no more enlarge the obligation of the surety, without his consent, than the obligee can.

It is plain from a scrutiny of these Treasury entries, that Barrett was required, or at least authorized by the United States, to perform the services and make the disbursements to which they refer. His payments therein are frequently cut down, suspended or disallowed—not because he was not employed by authority of the United States in the services to which they relate, but because in some cases he overstepped the bounds of that authority ; in others, erred in the manner of its exercise ; in others, failed to produce the proper vouchers of payment.

In addition to all this, the sum of $56,000 was remitted by the Treasury at Washington directly to Barrett, August 16th, 1845, less than two months before he went out of office, and charged in his general account. (Record, page 29, folio 67.) As it is perfectly apparent from the accounts themselves that the customs receipts of the collector's office received at the District of New-Orleans far exceeded its legitimate disbursements, this large sum must have been remitted to Barrett to cover demands of other branches of the public service. This single item struck out, the balance would be in his favor.

The amount thus remitted to the collector, together with all the items relating to his disbursements in these various and widely different matters, with the numerous "additions," "deductions," "disallowances" and "suspensions," are all mingled and blended with his accounts relating to the office covered by this bond, as then or at any time defined by law, and a general balance of the whole account struck, with the whole of which it is proposed to charge the estate of one of the sureties.

It must not be overlooked, that the items in the

general debit columns of the Treasury accounts, under the head of "light money collected" and "marine hospital money collected," have no relation to the present controversy. The collector was authorized by law to collect these moneys, and is properly charged with them. They have no connection with the heavy disbursements for the light-house service, which exceeded $22,500, (Record, p. 57, folio 139,) or for those larger still, relating to the erection of a new marine hospital. (Record, page 7, fols. 15 and 16, and page 57, folio 139.) The same distinction should be kept in mind between revenue boats and revenue cutters. The former the collector might employ, and it would be his duty to pay for their services.

Confronting these facts with the condition of the bond sued on, the question at once arises, were these services thus imposed on Barrett, and for the miscarriage or mal-administration of which it is now attempted to charge the surety, any part of his duties as collector of the customs? After a somewhat diligent search of the various statutes, defining the duties of collectors of customs, enacted prior to the appointment of Barrett, and during his continuance in office, we have failed to discover any which made it his duty to act as contractor of supplies or disbursing officer for the light-house service, the revenue cutters, or the erection of hospitals, to say nothing of other services which appear to have been required of him. It is possible that, owing to the imperfect, meagre, and often erroneous indexes to the Statutes at Large, prior to December 1, 1845, there is some law relating to this subject which has escaped our attention. If so, doubtless the other side will point it out. We think there is none.

In the opinion granting the motion to strike out the defendants' answer, (United States *vs.* Gaussen, 2 *Wood's Rep.*, p. 98,) his Honor Judge Wood cites

an extract from the opinion in the case of Broome *vs.* United States, (15 *How.* 157,) in which some of the duties of collectors of customs are enumerated, among which is that of the disbursements for "light-house," &c. But that opinion was delivered after the passage of the act of March 28, 1850, by which the Secretary was authorized to make collectors of customs superintendents of light houses.

With the foregoing facts in view, we now come to the question whether there was error in striking out the material parts of the defendants' answer.

First.—As to the first clause struck out. (Record, p. 58, folio 141.) This clause charges as a fact, that the *United States* imposed responsibilities and duties upon Barrett as collector different and variant from those legally incumbent on him as collector at the date of the bond. It also alleges as a conclusion of law, that this conduct of the Government rendered the bond void as to the surety. If the form of this defence were to be tested by the nice and metaphysical rules and distinctions of the system of common law pleading in vogue in the days of what might be called the forensic schoolmen, it might be bad, inasmuch as it does not allege with "certainty to a certain intent," that the character of the office was radically changed, so as to bring it in precise terms within the case of Pybus *vs.* Gibb, 6 *El. & Bl.* 903. But we think it is more than doubtful whether, under the liberal (or lax) rules of pleading in Louisiana, under their civil law procedure, this clause was so defective as to warrant the Court to strike it out, and prohibit the defendants from proving any of the facts alleged therein. It is held in that State, that though the allegations be indefinite and informal, yet if from the pleadings or proceedings, before the trial, the opposite party have sufficient notice of the nature of the demand or defence to be advanced, and could not be sur-

prised, evidence thereof will be received; and that the object of pleading is to notify the adverse party of the nature of the claim or defence, that he may be prepared to rebut it, and not be surprised, and that he cannot, for lack of more explicit pleadings, exclude pertinent evidence, of whose existence and probably intended introduction he was previously aware.

Lawson *et ux. vs.* Ripley, 17 *Louisiana*, 238.
Frierson *vs.* Irwin, 5 *Annual Rep.* 531.
Waterman *vs.* Gibson, 5 *Annual Rep.* 673.
Ralston *vs.* Barclay *et al.*, 6 *Martin*, 649.
Ory *vs.* Winter, 4 *Martin New Series*, 277.
Tracy *vs.* Tuyes *et al.*, 7 *Martin New Series*, 354.

We understand the learned Judge below to concede, that if the character and functions of the office of collector had been materially changed, the bond would have no longer bound the sureties. It would have been void as to them. We submit that this is embraced in this clause now under consideration. Whether the defendants had sufficient evidence to prove that or not, is not the question here. The right to make the effort was summarily denied them.

But whether the allegations were sufficiently precise and comprehensive to show that the bond had been rendered void or not, they were a good answer to a large number of the items in the accounts annexed to and forming part of the petition. The fact that this claim of the answer alleged more comprehensive legal consequences to the dealings of the Government with Barrett than was warranted, did not deprive the defendants of the right to prove its allegations and have the facts applied to the defeat of items in the account which did not relate to the office for performance of the duties of which alone the surety became liable. It is not to be denied, however, that it may be claimed that this clause proceeds on the idea that only the legitimate duties of the office had been

enlarged by law subsequent to the date of the bond, and that, under the doctrine of United States *vs.* Singer, (15 *Wall.* 111,) the sureties were liable for the faithful performance of such enlarged duties. To any suggestion of this kind it may be answered, that the additions to the duties alleged by the pleader, are not described with particularity, and whether these new duties imposed had, in the language of the Court in U. S. *vs.* Singer, "any relation to or connection with the business" of the collection of the customs, could not be determined till the proof was presented. It was error, therefore, to strike out this clause, and to exclude proof of the facts therein alleged.

Second. With the second clause of the answer, (Record, page 58, fol. 142,) little need be said. The accounts annexed to the petition are full of items relating to the matters embraced within this clause. Whether the defendants were held liable by the verdict of the jury for such disbursements, it is not easy to tell.

Third. The third clause of the answer avers that Barrett was required to expend and disburse large sums for the construction of the new marine hospital, and for the maintainance and supply of existing hospitals and light houses, and of vessels of the revenue and naval service, and for other purposes entirely *beyond the scope of his duties as collector, as defined by law.* Clearly, the facts here alleged are a complete answer to all that class of items in the accounts annexed to the petition. The bond was for the faithful performance of his duties as collector of the customs, not as a constructor of public buildings, nor as disbursing officer therefor, nor for the maintainance and supply of hospitals, light houses, nor revenue cutters, nor for the naval service. The allegations of the petition aver that the "accounts of said Barrett, as collector as aforesaid,

" were adjusted by the proper officers of the Trea-
" sury, and a balance of $41,376.64 was found to be
" due and owing by said Barrett to the petitioners,
" *all of which will more fully appear by the certi-*
" *fied statement of said accounts hereto annexed.*"

Strange, indeed, if the defendants are not to be allowed to allege and prove that a large portion of "said moneys," for which they are thus sued, were expended by direction of the obligee of the bond, for objects in no way legally connected with the office, for the performance of the duties of which, according to law, they had become responsible. We submit that the decision, striking out this clause of the answer, was manifest error.

Fourth. The fourth clause of the answer alleges that Barrett was required by the United States, as collector, to *receive* and disburse, under its said requirements, large sums of money, which he was not required by law to receive and disburse as collector, all of which appears by the account filed by the plaintiffs herein. It then charges that this was done without the consent of the decedent, whereby the liability of the latter, as surety on the bond, if it ever existed, was avoided and discharged.

The only difficulty with this clause is the manner in which the legal effect of the facts alleged is stated. It should not be forgotten that the defendants were answering the allegations of the petition in the light of, and as qualified by, the account annexed thereto. And, as already stated, this account shows, that on August 16, 1845, Barrett was remitted, directly from the Treasury, $56,000. This was obviously for disbursements by him, not in or about his duties as collector of the customs, but in other branches of the public service. The legitimate receipts of the coltor's office, as remarked before, were greatly in excess of its disbursements, by many hundreds of thousands of dollars. This $56,000 *must*, there-

fore, have been sent him for disbursements for other purposes. Yet it is made a charge against the surety, and, as before noticed, it exceeds in amount the sum alleged to be due from Barrett. Practically, therefore, every dollar of the balance now sought to be recovered of the surety grows out of a charge for moneys not covered by the condition of the bond. The reception of this money by Barrett, under the direction of the plaintiffs, was no part of his duties as collector, and can no more bind the surety than so much money sent from the Treasury to him to act as paymaster in the army, contractor for dredging the Mississippi, or for building a fort on the Dry Tortugas.

Should it be suggested that it does not appear what this $56,000 was sent to Barrett for, or what became of it, the answer shatters the right of the plaintiffs to recover in this suit. Where a plaintiff and obligee of an official bond seeks to subject a surety for money alleged to be within the condition of the bond, he must prove that the money went into the hands of the principal in connection with or in relation to the business of the office, for the faithful performance of the duties of which the surety has bound himself. The transcript of the Treasury account would not be *prima facie* evidence on this point, if it had stated the object of the remittance. It, however, says nothing on the subject. But if it should be held otherwise, the defendants have the right to allege and prove that the money related to a matter wholly distinct from the office, and from any duty imposed by law on the Collector.

This they alleged in the clause under consideration, and they had the right to prove it if they could, and thus defeat the attempt to hold them liable for an obligation which the decedent surety had never assumed.

We submit, therefore, it was error to strike out this part of the answer.

III.

We will now consider the requests made by the defendants for certain instructions to the jury, and the refusal of the Court to give them.

First. The defendants requested the Court to charge:

"That if the jury find from the evidence that the Secre-
"tary of the Treasury required the said Barrett, while col-
"lector, to use the moneys received by him as collector in
"the redemption of Treasury notes of the United States,
"that such requirement was an important and material
"change of the duties, functions and employment of the
"said Barrett as collector, as regulated by law, and when-
"ever made, discharged the sureties on his official bond
"from all liability for his subsequent official misconduct."
(Record, p. 82, folio 201.)

We shall spend but few words on the point presented under the exception to the refusal of the Court to give this instruction. If this new duty imposed on the collector by his superior officer, the Secretary of the Treasury, had been inserted in the bond without the consent of the surety, the bond would have been avoided as to the latter.

Miller *vs.* Stewart, 9 *Wheat.* 380.

It was a material and important change in the duties of the office not contemplated by the parties when the obligation was entered into, and should be held to avoid it, so far as the surety is concerned. Barrett is charged with deficiencies in his Treasury note accounts; one instance of which will be found in the Record, p. 42, folio 101. It will be observed, by a scrutiny of this since complicated Treasury account, that all the transactions of Barrett with the Government, including matters having no proper rela-

tion to his duties as "collector of customs for the District of New-Orleans," are blended in this account, and the defendants made liable for all deficiencies, no matter out of what they grew.

Second. The next request to charge was as follows:

"That while Barrett, the principal in the bond sued on, "held the office of collector, no law imposed on him the duty "of making disbursements for any marine hospital, or for the "light houses or revenue cutters, and that such duties and "disbursements were extra-official as to the office of collec- "tor, and that the sureties on the bond sued on are not re- "sponsible for any fault, neglect or misconduct of the said "Barrett in respect to such extra-official disbursements; and "if the jury find from the evidence that said Barrett, while "he held said office, was employed by the superior officers of "the Department to make disbursements for the marine hos- "pital, light houses and revenue cutters; and that the said "Barrett was furnished money directly from the Treasury of "the United States, or from other sources than the proper re- "ceipts and collections of the office of collector; that in "order to charge the defendant with the money thus fur- "nished, or any part thereof, it is incumbent on the plaintiff "to prove that the money thus furnished, or such part there- "of, was necessary to cover the disbursements proper to the "office of collector, or was furnished for that purpose." (Record, page 83, fols. 202–3.)

We respectfully submit that it was manifest error to refuse this request. It was, in substance, a request to instruct the jury that the plaintiffs were not entitled to recover for any acts or omissions not covered by the condition of the bond. The Court met the request by a simple refusal, with no qualification whatever. It was equivalent to saying to the jury that the defendants were to be held liable for all the charges against Barrett, whether arising out of official or unofficial acts, whether covered by the condition of his bond or not—whether for moneys received by

him in his capacity as collector as regulated by law, or moneys sent him directly from the Treasury at Washington to be disbursed in matters foreign to the legitimate duties of the office covered by the condition of the bond. With due deference to the Court below, we submit that this refusal was wrong in principle and in conflict with the following authorities:

Dedham Bank *vs.* Chickering, 4 *Pick.* 314.
Legh *vs.* Taylor, 7 *Barn. & Cres.* 491.
U. S. *vs.* Singer, 15 *Wall.* 111.

The last case cited would be an authority against the ruling below if these extra-official duties had been *imposed by law* subsequent to the date of Barrett's appointment. But, as we have previously stated, we have been unable to discover any law which imposed upon collectors of customs the duties referred to in the request to charge now under consideration, at any time previous to the appointment of Barrett, or during his term of office, which ended October 12, 1845.

In Converse *vs.* The United States, (21 *How.* 463,) in commenting upon the Act of May 7, 1822, sec. 18, the Court, by Taney, Ch. J., say:

"At the time this law was passed, the collectors, surveyors "and naval officers were, in certain contingencies mentioned "in the Act of March 2, 1799, required to do the duties of the "offices of each other; and, without any special law upon the "subject, it was the settled practice and usage of the Gov- "ernment to require collectors to superintend lights and "light houses in their respective districts, and to disburse "money for marine hospitals, and the revenue cutter service, "for which, by the practice and regulations of the Treasury "Department, they were allowed certain commissions. *But* "*there was no Act of Congress imposing these duties on the* "*collector*, or fixing his commissions for these services and "disbursements. They were charged *as extra services*, that "is, *as not belonging to the office of collector*." (P. 468.)

The law remained in this condition till after Barrett

ceased to be collector, except as it was altered by acts which limited the compensation to a maximum. The duties imposed by law, or by authority of law, upon collectors of customs, continued the same till years after Barrett's term of office expired. Clearly these were the only duties for the faithful performance of which the sureties bound themselves.

Third. The last request to charge was in the following words:

"That if the jury find from the evidence that the Secre-
"tary of the Treasury caused to be remitted to Thomas
"Barrett, while collector, money out of the Treasury of
"the United States, and employed him as disbursing officer
"of the Government in defraying the expenses of the light-
"house service, of the erection of the marine hospital at
"New-Orleans, and in other matters not connected with his
"official duties as collector, as regulated by law, and extra-
"official as respects the office of collector, and in the ac-
"counts between the Government and the said Barrett,
"filed with the petition, there are mixed and blended to-
"gether on the debit side of the account against said Bar-
"rett, the moneys received by him officially for duties on
"imports, and from other sources from which he was by
"law authorized to collect, and moneys remitted to him di-
"rectly out of the Treasury of the United States; *that in*
"*order to recover the balance brought down in the present*
"*action, it is incumbent on the Government to prove, to the*
"*satisfaction of the jury, that the said balance brought*
"*down, resulted from the failure of the said Barrett to ac-*
"*count for the funds which came into his hands as collec-*
"*tor, and within the scope of his official duties in that*
"*office, and his failure to perform his duty in respect to such*
"*funds, and not from his failure to account for funds re-*
"*ceived from the Treasury for the extra-official purposes, and*
"*his failure to perform his duty in respect to such funds.*"

"All of which the Court refused to charge the jury, ex-
"cept that part beginning with the words, 'that in order to
"recover the balance brought down,' and thence to the end
"of the charge as requested."

It is not too much to say that the compliance of the Court with that portion of this request to which it yielded its assent, was a virtual concession that we were entitled to a compliance with the whole. If we were entitled to any part, we were certainly entitled to the whole. The Court seems to have admitted the legal correctness of the proposition involved in the request, by charging the mere naked legal conclusion which it embraces, but it rejected the premises which were the facts appearing in the accounts then before the jury, and which were inseparably connected with the conclusion, and alone furnished the only subject matter to which the jury could apply the rule conceded by the Court. The conclusion, thus dissevered from all the facts in the case upon which the jury were to pass, was well calculated to mislead them. In other words, the jury were left to infer that, though they found the facts which the request enumerated, and which it assumed they were to find before the rule could be applied ; still, that these facts would not warrant them in applying the conclusion of law thereto, for the protection of the defendants. They could draw no other inference from the refusal of the Court to charge the premises of the proposition. Whatever construction a jury of acute lawyers might have put on this part of the charge as it stands, it is clear that to a jury of laymen the proposition presented by the request was practically emasculated and bereft of all guiding force. They would naturally draw the conclusion that, as to all the facts enumerated in that part of the request which was denied by the Court, they were not at liberty to consider them, and that, as there were no other facts in the case to which the rule conceded by the Court could be applied, it was of no avail to the defendants. We submit that the defendants were entitled to have the jury instructed in conformity to their request, and thus have the obligations of their decedent surety limited to the undertaking which he had entered into.

IV.

We therefore submit, that the judgment should be reversed and a new trial ordered.

WM. D. SHIPMAN,
WM. W. MACFARLAND,
Of Counsel for the Defendants.
Plaintiffs in Error

Supreme Court

OF THE UNITED STATES.

MRS. BESSIE ELGEE GAUSSEN, WIFE OF E. J. GAUSSEN, EXECUTRIX OF JOHN KINGSBURY ELGEE, DECEASED, E. T. PARKER, PUBLIC ADMINISTRATOR, SUBSTITUTED,

Plaintiffs in Error,

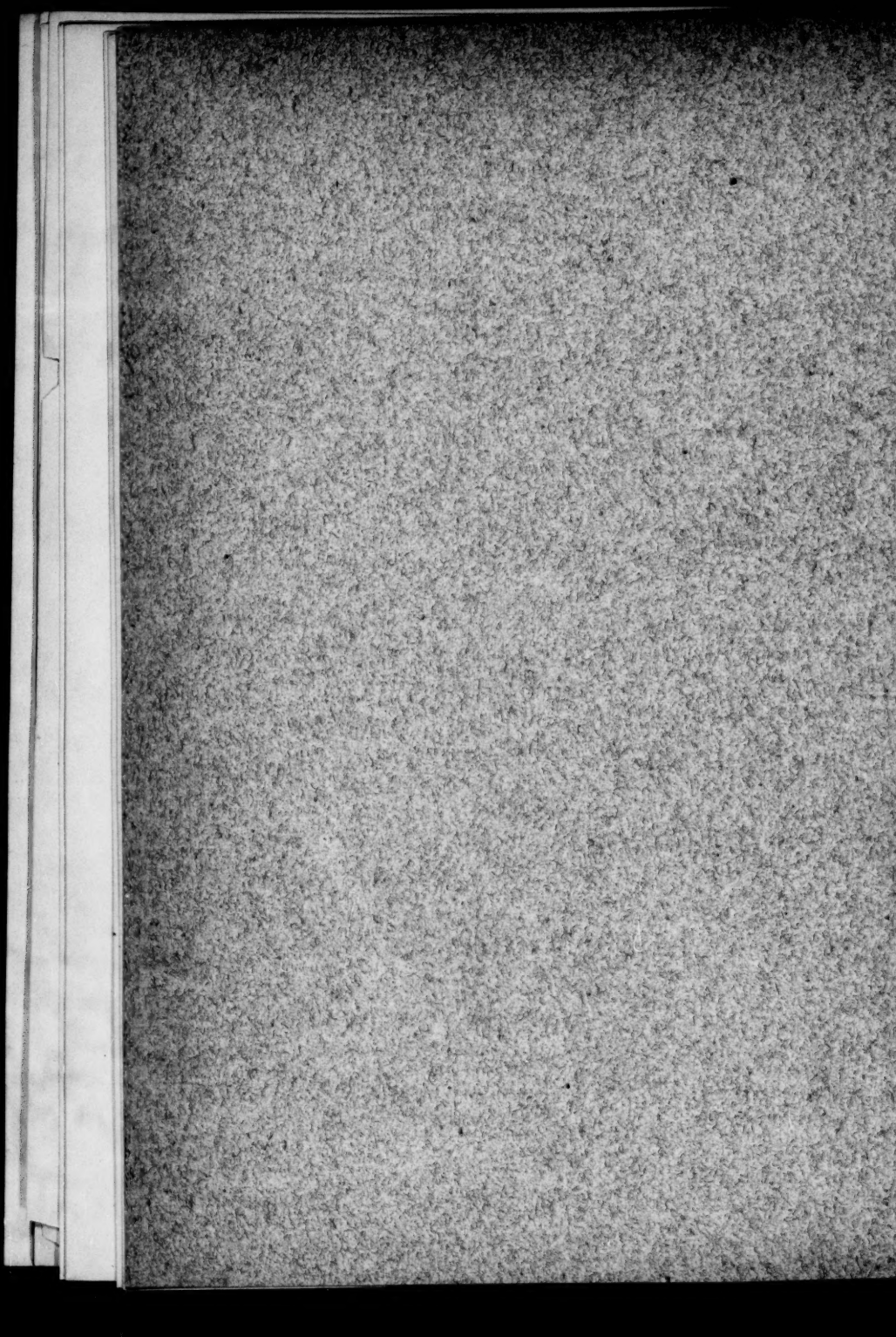
vs.

THE UNITED STATES.

NOTE OF ARGUMENT

Supplemental to the Brief of Counsel on behalf of the Plaintiffs in Error.

NEW YORK:
EVENING POST STEAM PRESSES, 208 BROADWAY, COR. FULTON STREET.
1878.



EVENING POST STEAM PRESSES, 208 Broadway, cor. Fulton St., N.Y.

Supreme Court of the United States.

MRS. BESSIE ELGEE GAUSSEN, WIFE OF E. J. GAUSSEN, EXECUTRIX OF JOHN KINGSBURY ELGEE, DECEASED, E. T. PARKER, PUBLIC ADMINISTRATOR, SUBSTITUTED, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

NOTE OF ARGUMENT

Supplemental to the brief of Counsel on behalf of the Plaintiffs in Error.

It must be conceded by counsel for the plaintiffs in error, and it is conceded, that neither lapse of time nor the negligence of its agents will, as against the Government, constitute a bar to an action. Therefore, we do not contend with the Government on this ground. But it is a consideration worthy of the attention of the court, that there is no general rule in jurisprudence, which, carried to its logical result, may not, in the particular case, work gross injustice, and of this there can be no more impressive illustration than the case at bar presents,

This claim was permitted to slumber in the archives of the government for nearly thirty years, although the sureties of Barrett were numerous and all were persons of abundant means. Like a cancer in the human body, unknown to its victim, but slowly exhausting his vitality and sapping the foundations of life, this concealed and unknown claim was all these years increasing its proportions and secretly devouring the estate of the surety. Meanwhile, time and death, the efficient allies of all such claims, had been busy obliterating all evidence against it, and removing the witnesses whose testimony might have saved the surety. And to make the situation of the defendant still more grievous, time and death together have, in the meantime, destroyed her right of contribution from co-sureties, so that the burthen which many undertook to share jointly, grown in the lapse of years to enormous proportions, falls upon one alone.

When, in addition to all this, a fact appertaining to the history of this case, but not in the record, is considered, namely, that the interest heretofore and now withheld by the Government on the money of the surety in its possession, amounts to more than the demand against the surety, there is presented a case of *injustice* as the product of rules framed for the administration of *justice* that may well terrify all persons standing in the relation of sureties for Government officials. Such a person has no assurance that his widow and orphans will be permitted to enjoy the estate, which by a life of frugality and industry he has accumulated for their support. It may be swept at any moment into the remorseless maw of the Treasury, in satisfaction of a claim that antiquarian research has discovered, and the original infirmities of which time has obliterated.

These considerations constitute no bar to this action, but they appeal to the court in the most persuasive manner to give a surety in the situation of the defendant the full benefit of all legal rules in his defense according to their most beneficent construction, and they especially invite the vigilance of the court in the inquiry presented by the record, as to whether the surety has not been deprived of the benefit of these rules, by a harsh and technical construction applied to an answer embracing facts that do, if true, constitute a defense, and by the exclusion of all evidence in support of the facts, on the ground that they were not pleaded with sufficient technical precision.

I.

Barrett, on entering upon the duties of his office as collector of the port of New Orleans, gave a bond with John K. Elgee and others as sureties, "*conditioned for the faithful performance by him of all the duties of the said office.*" The liability of his sureties was and is upon the general principles of law strictly limited by these words to a liability for the faithful performance by their principal of the duties then by law appertaining to the office of collector, or such as might subsequently be imposed upon him as collector by statute.

U. S. *v.* Powell, 14 Wal., 500.
U. S. *v.* Singer, 15 Wal., 122.

Barrett became collector on the 6th of July, ~~1874~~ 1864. He ceased to be collector on the 12th of October of the following year. *During this period of fifteen months and a half there was no change in the law defining the duties of collectors.*

II.

In order to recover against the surety, it was necessary for the Government to show in an appropriate manner what the duties devolving upon the collector were, and the nature and extent of his failure in the performance of those duties.

On the other hand it was the right of the defendant to allege and prove that, whatever may have been the nature or extent of the default of Barrett in his transactions with the Government, *it did not arise out of the performance by him of the duties of the office of collector, for the faithful performance of which duties and none other the sureties bound themselves;* and the errors complained of are that the defendant was not permitted to allege and prove facts that would have established this defense, and that the liability of the defendant was not so limited by the court in its rulings and in its charge to the jury.

The defendant's answer setting up this defense was on the plaintiff's motion stricken out by the court. The accounts between Barrett and the Government were taken as definitive and conclusive evidence of the surety's liability, and the defendant was not permitted to question them or any of the items embraced in them. The court having in effect decided that the accounts were in themselves conclusive evidence of Barrett's liability against the surety, then decided upon inspection thereof, as matter of law, that all the items did relate to the duties of his office as collector, and refused to receive evidence to the contrary.

III.

The statute defining the duties of collectors in force during the period that Barrett held this office, is the Act of 1799, referred to in the opinion of the Circuit Court, and those provisions of the act which govern the present case are as follows:

"The collector shall receive all reports, manifests and documents to be made or exhibited on the entry of any ship or vessel, according to the regulations of this act; shall record, in books to be kept for that purpose, all manifests; shall receive the entries of all ships or vessels, and of the goods, wares and merchandise imported in them; shall, together with the naval officer where there is one, or alone where there is none, estimate the amount of the duties payable thereupon, endorsing the said amount upon the respective entries; *shall receive all moneys paid for duties*, and take all bonds for securing the payment thereof. * *

. "And the said collectors, naval officers and surveyors shall keep fair and true accounts and records of all their transactions *as officers of the customs* * * and shall at all times submit their books, papers and accounts, to the inspection of such persons as may be appointed for that purpose; *and the said collectors shall at all times pay to the order of the officer, who shall be authorized to direct the payment thereof, the whole of*

the moneys which they may respectively receive by virtue of this act (such moneys as they are otherwise by this act directed to pay only excepted)."

In the foregoing provisions of the statute, the duties for the performance of which, on the part of the collector, the sureties became liable upon their bond, are precisely defined; and here it is to be observed that among those duties it is nowhere specified that the collector, as collector, shall become a depositary of money sent him by the Treasurer of the United States, and disburse it according to the directions of the treasurer or other officer of the Government. It was his business to collect customs duties and pay over the amount collected to his superior officer, and this was the whole of his duty in this behalf.

These sureties were not invited to become responsible, and did not undertake to become responsible for Mr. Barrett as the general agent for the United States Government for receiving money from the treasury and disbursing it as directed. He was not a paymaster, but a collector of customs. Nevertheless, it stands out prominently on the very face of these accounts, that a sum of money so remitted to Barrett by the Treasurer of the United States, having no possible connection with his duties as collector, constitutes the cause of action in this case.

At p. 56, of the record in the account put in evidence by the Government, the United States is credited, and Barrett is charged with the sum of $56,000 received from the Treasurer of the United States. Now, striking this item out as a sum for for which the surety is not liable, there is no cause of action. Eliminating it from Barrett's account as collector, and transferring it to some other appropriate account between himself and the Government, Barrett, as collector, will be found to be the creditor and not the debtor of the Government. Attention is here called to this item as an illustration of the character of the account, and as exhibiting at a glance the glaring injustice done to the defendant by the rulings below.

If the sureties of Barrett can be held liable for fifty-six *thousand* dollars, remitted to him by the Treasurer of the United States for some purpose or other, they might with the

same propriety be held liable for fifty-six *million* dollars, remitted in the same manner—a proposition as offensive to one's sense of natural justice as it is contrary to law.

Referring now to the defendant's answer, it is to be observed that its interpretation was governed by the rule laid down by the courts of Louisiana for the construction of such pleadings, which is that—

"Although the allegation be indefinite and informal, yet if from the pleadings or proceedings before trial the opposite party have sufficient notice of the nature of the demand or defence to be advanced, and could not be surprised, evidence thereof will be received. The object of pleading is to notify the adverse party of the nature of the claim or defense that he may be prepared to rebut it, and not be surprised; and he cannot, for the lack of more explicit pleadings, exclude pertinent evidence of whose existence, and probably intended introduction, he was previously aware."

Hennen's Dig. *v.* 2, p. 1155.

It is to be noted here that in this case there is no claim of surprise, indefiniteness or uncertainty, and the only question, therefore, presented is whether the evidence offered was legally sufficient to affect the surety's liability.

The first paragraph of the answer may be considered as amounting to a general denial, and putting the plaintiff on proof of his alleged cause of action. This paragraph was not stricken out by the court. Undoubtedly, if the court had thought proper to admit it, under the general denial so remaining on the record, the defendants might have introduced evidence of the defences specifically stated in the subsequent paragraphs of the answer; and in that case the striking out of the rest of the answer would have been of no consequence, for the defendant would not have been prejudiced by it. But this was not allowed. The plaintiff had closed its case by introducing the accounts prepared by the Government and by Barrett, and rested, and when the defendant was about offering testimony in support of her answer, the attorney for the United States moved to strike out all that part of the answer which stated the defense. The court granted the motion, and "*did decide that the defendant was not entitled to offer any evidence to the jury*

in support of any allegation of said answer so stricken out as aforesaid." This action on the part of the court was, of course, equivalent to sustaining a general demurrer to the answer, and also in legal effect equivalent to refusing to receive any evidence under it, on the ground that the facts stated, and of which evidence was offered, did not constitute a defense. It is important to bear in mind that the objection to the answer was not that it was in any point indefinite or uncertain. An objection of this character, if sustained, would have left the defendant in a position to move to amend it. But it was an objection going to the root and branch of the answer, founded upon the proposition that no evidence was admissible under it that could affect the defendant's liability according to any interpretation of it. It becomes necessary, therefore, to look with some care into this pleading, in order to see whether it was utterly destitute of merit as a defense, and from what has preceded it is obvious that we are at liberty to do so upon the concession of the plaintiffs, that every fact stated in the pleading and every just inference from every fact therein stated, is true. This was conceded by the motion to strike out.

The first paragraph of the answer declares that the plaintiff, after the execution of the bond, imposed upon Barrett, the principal, the performance of duties, and exacted of him the assumption of liabilities in regard to the receipt, custody and disbursement of the moneys received by him in his capacity of collector variant from the duties and responsibilities incumbent upon him as collector at the date of the bond under the law then existing and in force. It is true that the pleader concludes from this that the bond became altogether void.

Now, applying the strict rule for the construction of pleas in abatement, namely, that they must be certain to a certain intent in every particular, this paragraph might be open to objection. But, subjected to such a rule of construction, very few answers prepared under modern Codes of Procedure could be sustained. It is well settled, however, that on general demurrer or on a motion to strike out, the most liberal rules of construction are always adopted by the court, and if anything in the nature of uncertainty or vagueness is relied upon as the ground of objection, opportunity is given to remedy that defect.

In this case it is plain enough that the pleader means to say that the alleged liability of Barrett arose out of the imposition upon him by the Government, and the assumption by him of duties and responsibilities in the receipt, custody and disbursement of money with which he, as collector, had nothing to do; and although the pleader does declare that the effect was to avoid the bond, it is simply another way of saying that the surety is not responsible for Barrett's default in the performance of other functions than those incident to his office of collector.

The next two paragraphs of the answer make the general allegation of the first more specific and certain. The second declares that the United States wrongfully released Barrett from the obligation of paying certain moneys received by him as collector in the manner required by law, and wrongfully required him to "expend and disburse" a large portion of the moneys received by him as collector by payments to other collectors, to surveyors of other collection districts, and to various other officers of the Government, and to disburse the revenues of his office for the construction of the new marine hospital, and for the maintenance and supply of existing hospitals and light houses, and of vessels of the revenue and naval service, and for other purposes entirely beyond the scope of his duties as collector, aforesaid, and as fixed and defined by law.

Now, it is true that the pleader does not here, in so many words, say that the particular account against Barrett, presented by the Government in this action, is affected by his general agency for the Government in these various matters unconnected with his office; but that is a legitimate, and, indeed, necessary inference, and was understood so to be by the court when it rejected the evidence offered for the purpose of showing that the account was so affected to the prejudice of the surety. Moreover, the several paragraphs of the answer must be taken and construed together as a whole, and any ambiguity on this precise point is quite removed by reference to the third paragraph. The pleader there says that Barrett was required to *receive and disburse*, and did actually during his term receive and disburse in pursuance of such requirements large sums of money *which he was not required by law to receive and disburse, all of which appears by the account filed by the plaintiffs herein.* And in this connection it is to be borne in mind

that these accounts were made part of the plaintiff's declaration.

Here is a clear and specific allegation that the accounts filed against the surety are unlawful as against him because they contain items of receipts and disbursements havingno relation to the duties of Barrett, as collector of customs, and for which therefore this surety is not responsible.

By striking out the answer the court held that, in judgment of law, this contention on the part of the surety was not well founded, and that conceding the balance of account sought to be recovered to consist entirely of sums of money that passed through Barrett's hands in his unofficial, individual and miscellaneous dealings with and for the Government, his sureties were nevertheless bound to make it good, and it therefore excluded all evidence as to the origin of the alleged cause of action against the surety.

The practical and fatal consequence of this ruling, which, it is submitted, was glaringly erroneous, is manifest by referring to the item before mentioned (*p.* 56, *fol.* 137), of $56,000, which item is a type of many others. Instead of there being anything to show that this money was received by Barrett in connection with the duties imposed upon him by law as collector, the whole account shows very clearly that it was not, and that it was one of many sums sent to him as a sort of general disbursing agent of the Government for many purposes foreign to his duties as collector; and if the sureties of Barrett can be charged with responsibility for one dollar of funds so supplied to him their liability was simply unmeasured and unlimited, and sustained no relation whatever to his office as collector.

It would seem from the opinion of the learned Circuit Judge that he was led into the error complained of by a misapprehension as to the state of the law during the period that Barrett was in office defining the duties of collectors, for he refers in his opinion, as an authority on this subject, to the case of Broom *vs.* the United States, 15 How., 157, which was based upon the Act of March 23d, 1850, passed long after Barrett ceased to be collector.

The account commencing at p. 53 and extending to p. 57 of the record, which was the basis of the balance found by the

jury, is full of items that appear upon their face to bear no relation to Barrett's official functions. It is true, the learned judge says in his opinion that so far as these items indicate the disbursement of money, they must be held to have been paid "to the order of the officer who shall be authorized to direct the payment thereof;" and his opinion proceeds upon the theory that this language is sufficiently elastic in its legal meaning and interpretation to enable the Treasurer of the United States to make Barrett, to the extent of the customs revenue coming into his hands, the general disbursing agent of the Government for any and every of the numberless purposes for which the Government may have had occasion to disburse money. Such an interpretation, as against a surety for the faithful performance of Barrett's duties as collector, and for that alone, it is submitted, is erroneous These words must be construed in connection with the collector's official functions as defined by law; and as so defined, those functions were to receive dues for customs, and from time to time to render his accounts of his receipts and to pay the balance in his hands over to his superior officer or to his order—in other words, to place the funds representing the balance of his account in the hands of the proper officer of the Government. But the learned judge overlooked the fact that even this latitudinary construction of the statute would furnish no authority for his ruling; for this construction would not permit the Treasurer of the United States to make a Sub-Treasury of the New Orleans Custom-house, and charge the sureties of the collector as manager of the Sub-Treasury.

In any and every point of view, therefore, the decision striking out the answer and forbidding all inquiry into the character of these items was manifestly wrong. Not only was this so as a proposition of law, independent of what the items might turn out to be, had such an examination been permitted, but, as before stated, it actually appears, on the face of this record, that the items into which an inquiry was forbidden were of a class for which Barrett's sureties could not be held liable, thus demonstrating that the rejection of the offered evidence not only might but actually did prejudice the defendant.

If, then, it be true, as this court has said, that any sub-

stantial addition by law to the duties of the obligor of a bond after the execution of the instrument, materially enlarging his liabilities, will not impose any additional responsibility upon his sureties unless the words of the bond, by a fair and reasonable construction, bring such subsequently imposed duties within its provisions (U. S. *v.* Powell, 14 Wal., 500–501), and if it be true, as this court has also said, that—

"The new duties should have some relation to or connection with such office or business, and not be disconnected from and foreign to both" (U. S. *v.* Singer, 15 Wal., 122), *it is certainly true that the Government, in the absence of a statute, and therefore without even color of authority, could not impose varied and promiscuous duties and obligations upon this collector, having no relation to the duties of his office, and hold his sureties responsible for their faithful performance. This the Government did, and this the court below has sustained the Government in doing.*

IV.

In our principal brief we have discussed the questions arising on the exceptions to the charge.

It is, perhaps, of little moment to consider the requests to charge, and the charge actually made by the court; for whether any or all of them were correct or incorrect as abstract propositions, they were rendered irrelevant and immaterial by the previous rulings in the cause.

The court had taken upon itself to decide that the objections to the accounts on the ground that they embraced items for which the defendant as surety was not responsible were frivolous, and excluded all enquiry into that subject.

The plaintiff's attorney introduced in evidence the abstract of the accounts and rested. Then, when the defendant was about offering testimony to support the answer, "on motion, the answer was stricken out." It is true that the first paragraph, embracing what may be called a general denial, was left, and this general denial, under the Louisiana practice, as well as

on general principles, put the onus of proving all facts material to a recovery on the plaintiff.

19 La., 360.
5 R., 117.
10 R., 453.
13 A., 375.

The gravamen of the complaint is, that Barrett, as collector, made default in this, that he neglected faithfully to account for and pay over to the plaintiff the money by him received for plaintiff *in his official capacity aforesaid.* The plaintiff's attorney proceeded on the theory that he had, by putting in evidence the accounts, proved his cause of action; the accounts under the ruling of the court being *prima facie* evidence against the surety. Doubtless, in the absence of any evidence on the part of the surety tending to establish a defense in whole or in part, this proof would have justified a recovery. But the defendant did offer evidence, and was about to introduce evidence to prove that the items of debit, or some of them, did not, in law, constitute, as against her, a ground of recovery. The defendant's general denial so remaining on record, as a part of the answer, *was eqivalent to an express allegation in respect to every item of debit embraced in the account, that it did not constitute a proper item of charge.* The court refused to hear evidence in support of these allegations.

The defendant's attorneys, on the trial are, in effect, offereing to prove that the plaintiff's claim had its origin in transactions between Barrett and the Government, having no relation to his official duties, as defined by law. The court excludes such proof, not on the ground that its offer was a surprise to the plaintiff's attorneys; not on the ground that it did not appear to be offered with reference to the particular accounts in question; but broadly and generally as irrelevant in any point of view. The defendant is to be regarded as further offering to prove specifically that this balance of account against the collector originated not in the performance of duties, as collector, but,

(1.) In disbursements to other collectors and surveyors, and to other officers of the Government.

(2.) In the expenditure and disbursement of moneys "*for the construction of a new marine hospital, the maintenance and supply of existing hospitals and lighthouses, and of vessels of the revenue and naval service,*" *and for other matters beyond the scope of his duties.*

(3.) In the RECEIPT and disbursement, as appears by the account filed, of moneys that, *as collector*, he was not bound or required by law to receive and disburse.

This specific evidence so offered was likewise summarily rejected on the broad ground that the facts, if true, would not affect the liability of the surety. Thus, in effect, deciding that the surety was liable not only for Barrett's default, as collector, but for any default as the general or special agent of the Government in respect to any and all matters in which it might employ him.

The attention of the court has been pointedly called to the perversion of legal principles involved in holding Barrett's sureties liable for his acts as the depositary and disbursing agent of the Treasurer of the United States of funds not received by Barrett as collector of customs duties.

In the same connection, the court is invited to consider the extraordinary effect upon the magnitude of the sureties' liability of holding them responsible for the disbursement by Barrett of the moneys collected by him for customs duties in the manner specified in the answer.

The statute prescribing the duties of collector as before pointed out, required only that Barrett should pay over to the Government the money collected by him for duties. This is the only fair and reasonable construction that the statute admits of, and this enables the surety to understand the measure of the liability he assumes. But if the Government is at liberty to require the collector to dole and dribble out his receipts as a sort of *paymaster-general*, then the liability of the sureties is wholly changed and enormously increased. For, as *paymaster-general* to other collectors and surveyors, he must on his own responsibility see that he pays on proper and legal vouchers from each one, and for every item; as *paymaster-general* for the construction of

marine hospitals he must at his peril see that every item disbursed for material, supplies and labor is paid on a proper voucher; as *paymaster-general* for the "maintenance and supply of existing hospitals, light-houses and vessels of the revenue and naval service" his liabilities and responsibilities would be enormous, and as different from those incident to his office of collector as it is possible to conceive. Indeed the accounts in the record bristle with objections founded on irregularities in these miscellaneous employments and disbursements.

Nevertheless, the ruling of the court involves a liability on the part of the surety for the regularity of every voucher incident to such disbursements, and for the legality of every payment, great or small, involved in them. Applying these observations to the charge to the jury, it is to be observed that in view of the sweeping character of the decision excluding evidence and defining the liability of the sureties, there was nothing left for the court to do but direct a verdict for the plaintiff for the amount claimed, and this in effect the court did. It was quite a work of supererogation to charge an abstract proposition, embracing, to a limited extent, the rule of law contended for by defendant's counsel, for the court had already excluded all evidence necessary to lay the foundation for the application of the charge by the jury.

The requests refused were, as pointed out in the brief to which this is a supplement, in the main proper requests. But the injury done to the defendants had already been done by rejecting all evidencee necessary to their practical application, and the refusal, though erroneous, was but the logical application of the previous decision and ruling of the court.

V.

It cannot be true in law as the court below in effect decided and ruled, that the Government, and Barrett, the collector, one or both, by any act or admission on their part, or any agree-

ment or understanding between them, could *conclusively establish the fact and the measure of the defendant's liability*, and preclude the latter from showing that the cause of action had no relation to the suretyship of the deceased surety, or that the amount admitted by the debtor to be due was not in fact due, *for this would be to hold the surety bound by a contract to which he was not a party, and had never assented, and to place his entire estate at the mercy of strangers.*

Therefore, for all the foregoing reasons the exceptions should be sustained, and a new trial ordered.

WM. D. SHIPMAN,
WM. W. MACFARLAND,
Of Counsel for Plaintiffs in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

MRS. BESSIE ELGEE GAUSSEN, EXECUTRIX, &C., PLAINTIFF IN ERROR,
vs.
THE UNITED STATES.
} No 222.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

Brief for the United States.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

MRS. BESSIE ELGEE GAUSSEN, executrix, &c., plaintiff in error,
vs.
THE UNITED STATES.
No. 222.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

BRIEF FOR THE UNITED STATES.

In the court below this was an action against Mrs. Gaussen, as executrix of John K. Elgee, deceased, a surety upon the official bond of one Barrett, who was collector of customs at New Orleans in 1844–'45. The case has been before this court previously, as reported in 19 Wallace, at page 198; the matter then decided being that the "Treasury transcript" of Barrett's accounts, offered by the United States, was *competent* as evidence in such suit.

The general question now is as to the validity of certain matters of defense, alleged by the plaintiff in error,

and overruled in the court below. This question was raised below mainly by a motion upon the part of the United States *to strike out* a part of Mrs. Gaussen's answer. That answer was as follows, the part affected by the motion being given in italics:

"The defendant herein, sued as executrix of the last will and testament of John K. Elgee, deceased, for answer to plaintiff's petition, denies all and singular the allegations therein contained, not hereinafter specially admitted.

"The defendant avers that she does not know whether the alleged signature of the decedent, John K. Elgee, to the bond sued upon is genuine or not, and she requires strict proof of its genuineness.

"*And, further answering, defendant avers that if said bond was ever executed, delivered, and took effect, which is not admitted, then defendant avers that said bond, after its execution, was rendered void and null, so far as said decedent was concerned, for this, that subsequent to its date and during the period of the term of office of Thomas Barrett, as collector of the port of New Orleans, the United States imposed on and exacted of him the performance of duties and the assumption of responsibilities in regard to the receipt, custody, and disbursement of the moneys received in his said capacity as collector aforesaid, different and variant from those duties and responsibilities in that regard legally incumbent upon him as collector aforesaid, at the date of said bond, under the law then existing and in force. That during his said term of office said Barrett was dispensed by the United States from his duty and obligation of paying certain moneys, received by him in his said capacity, to the United States, in the mode required by law, and in lieu thereof was required by the United States to expend and*

disburse, and under its orders he did actually expend and disburse, during his said official term, a large portion of said moneys by payments made to collectors and surveyors of other collection-districts, and to various other officers of the government. That said Barrett was required by the United States to expend and disburse, and he did, in accordance with its orders, expend and disburse, during his said official term, a large portion of said moneys for the construction of the new marine hospital and for the maintenance and supply of existing hospitals and light-houses, and of vessels of the revenue and naval service, and for other purposes entirely beyond the scope of his duties as collector aforesaid, and as fixed and defined by law. That said Barrett was required by the United States, in his said capacity as collector aforesaid, to receive and disburse, and did actually during his said official term receive and disburse, under its said requirements, large sums of money which he was not required by law to receive and disburse in his said capacity as collector; all of which appears by the account filed by the plaintiff herein. And defendant charges that the duties and risks and responsibilities of said Barrett as collector aforesaid, without the consent of said decedent, were varied, enlarged, and changed by the United States subsequent to the date of said bond and during his official term, whereby the liability of said decedent as surety on said bond, if it ever existed, was avoided and discharged.

"This defendant further avers that the said Thomas Barrett departed this life about the year 1846, *in New Orleans, having a large real and personal estate, consisting in property and assets, more than sufficient to pay the amount of plaintiff's demand. That if the United States had a valid claim against said Barrett, it had the right of priority of payment on such property and assets, which it neglected*

to enforce and lost. That upon said bond are signatures which purport to be those of Francois Delery, Sylvain Peyroux, Lucien Hermann, M. B. Cantrelle; that all of said parties are dead; that each died leaving a large and valuable estate, more than enough to pay the amount claimed in this suit; that if the United States had a valid claim against said Barrett and said Francois Delery, Sylvain Peroux, Lucien Hermann, and M. B. Cantrelle, it had the right of priority of payment of said demand out of each and all of said estates, which it neglected to enforce and lost, whereby the liability of said J. K. Elgee, if it ever existed, was discharged.

"Wherefore defendant prays, &c."

The motion to strike out was allowed by the court upon the ground (folio 199) that such part of the answer, even if true, was insufficient, as pleaded, to bar the said plaintiff's action.

Besides the question involved in the above motion, others arose, as follows:

In the course of the trial the present plaintiff in error requested the court to give the following instructions in relation to matters which, as is admitted, the evidence in the cause tended to establish:

1. "That if the jury find from the evidence that the Secretary of the Treasury required the said Barrett while collector to use the moneys received by him as collector, in the redemption of Treasury notes of the United States, that such requirement was an important and material change of the duties, functions, and employment of the said Barrett as collector, as regulated by law, and whenever made, discharged the sureties on his official bond from all liability for his subsequent official conduct."

2. "That while Barrett, the principal in the bond sued on, held the office of collector, no law imposed on him the duty of making disbursements for any marine hospital or for the light-houses or revenue-cutters, and that such duties and disbursements were extra-official as to the office of collector, and that the sureties on the bond sued on are not responsible for any fault, neglect, or misconduct of the said Barrett in respect to such extra-official disbursements; and if the jury find from the evidence that said Barrett while he held said office was employed by the superior officers of the department to make disbursements for the marine hospital, light-houses, and revenue-cutters, and that the said Barrett was furnished money directly from the Treasury of the United States, or from other sources than the proper receipts and collections of the office of collector, that, in order to charge the defendant with the money thus furnished or any part thereof, it is incumbent on the plaintiff to prove that the money thus furnished or such part thereof, was necessary to cover the disbursements proper to the office of collector, or was furnished for that purpose."

3. "That if the jury find from the evidence that the Secretary of the Treasury caused to be remitted to Thomas Barrett while collector, money out of the Treasury of the United States, and employed him as disbursing-officer of the government in defraying the expenses of the light-house service, of the erection of the marine hospital at New Orleans, and in other matters not connected with his official duties as collector, as regulated by law, and extra-official, as respects the office of collector, and in the accounts between the government and the said Barrett, filed with the petition, there are mixed and blended together on the debit side of the

account against said Barrett the moneys received by him officially for duties on imports and from other sources from which he was by law authorized to collect, and moneys remitted to him directly out of the Treasury of the United States; *that in order to recover the balance brought down in the present action, it is incumbent on the government to prove to the satisfaction of the jury that the said balance brought down resulted from the failure of the said Barrett to account for the funds which came into his hands, as collector, and within the scope of his official duties in that office, and his failure to perform his duty in respect to such funds, and not from his failure to account for funds received from the Treasury for extra official purposes, and his failure to perform his duty in respect to such funds.*"

These instructions the court refused to give, excepting so much of the last instruction as is italicised.

The various adjustments of Barrett's accounts, running from July 25, 1844, to October 12, 1845, will be found in the "Treasury transcript," at pp. 4, 8, 14, 19, 27, and 34, of the record.

1. The matters *charged against him* consist of *ten* different items, viz: (1) "*Duties* on one or other article imported; (2) "*Light money;*" (3) "*Marine-hospital money;*" (4) "*Interest on goods in store;*" (5) "Interest on bonds for railroad-iron;" (6) "*Fines, penalties,* and *forfeitures* collected by late collector," &c.; (7) "*Balances* brought forward;" (8) "*Net proceeds of sales of unclaimed merchandise;*" (9) "Amount" collceted upon certain bonds in suit, to be credited on account of late collector; and, (10) "Amount of warrant No. 2646 on Treasurer, dated August 16, 1845, $56,000," (page 27).

2. It would be impracticable much to abbreviate Barrett's accounts as to the matters *credited* therein.

Besides, it seems that the character of the *exceptions* by the plaintiff in error to the rulings below in reference to such credits, makes it unnecessary to attempt such abbreviation. These exceptions and the replies thereto may readily be understood by current references from time to time to the "transcript."

The condition of the collector's bond in this case is in the usual form, as follows:

"Now, therefore, if the said Thomas Barrett has truly and faithfully executed and discharged and shall continue truly and faithfully to execute and discharge all the duties of the said office, according to law, then," &c. (Record, folio 6.)

ARGUMENT.

A.—*As to the matter stricken out of the answer.*

I. An analysis of that matter (*italics* above, and see folios 196, &c., of Record) shows that the plaintiff in error claims that the collector's bond was rendered *null and void* as to the decedent by the following acts of the United States, done subsequent to its execution:

(1.) That they imposed upon the collector duties and responsibilities in regard to the receipt, custody, and disbursement of moneys, variant from those legally incumbent upon him at the date of said bond.

(2.) That the collector was excused from his duty of paying out moneys in the mode required by law, and in lieu thereof was required to disburse them to collectors and surveyors of other districts, and to various other officers of the government.

(3.) That the collector was required by the United States to disburse moneys for the construction of the new marine hospital and for the maintenance of existing hospitals and light-houses, and of vessels of the revenue and naval service, and for other purposes entirely beyond the scope of his duties.

(4.) That the collector was required to receive and disburse large sums of money which he was not required by law to receive and disburse. "*All of which* [as is alleged in the answer] *appears by the account filed by the plaintiff;*" it also being again alleged, by way of summing up the matter above set forth, that the duties and risks of the collector were, without the consent of the decedent, varied and enlarged by the United States subsequent to the date of the bond, and thereby the decedent's liability, if it ever existed, was avoided.

II. In this part of the answer it was also alleged that the United States have been guilty of laches in not heretofore satisfying their claims out of the estate of Barrett, and out of the estates of the co-sureties of the decedent—all of which have since been lost—and therefore that the estate of the decedent is discharged.

I. In reply to the allegations mentioned above under the letter I, I submit:

(*a*) That no mere addition by the United States to the duties of a bonded officer can render his bond *null and void.* It may be that, in certain cases, a performance of the duties so added will not be secured by such bond (compare Singer's case, 15 Wall., 111, with Powell's case, 14 Wall., 493). But it seems that there is no reason why a performance of the original duties, supposing these distinguishable from those added, should not remain

secured as before; and that, in this respect, it can make no difference whether the action of the United States complained of was by *legislation* or merely by *administration*.

Upon this point it will be observed, upon a perusal of the former portion of the answer stricken out (that part, I mean, included above under I), that its contention is that the addition of the duties specified *rendered the bond void*, and that the fact of such addition "appears by the account filed by the plaintiff." Therefore, inasmuch as it is stated that the facts relied upon as establishing this nullity are apparent from the account filed by the United States, no question is made *here* as to the admissibility of evidence of such facts. And inasmuch as that account was by the United States made a part of its petition, it seems that the proper way to raise the question of *validity* was by *demurrer*, or by *motion in arrest of judgment*, and that even before this court such defense may be taken advantage of (in the absence of the allegation stricken out) as *error* upon the face of the record; and so that in no sense has the plaintiff in error been prejudiced by the allowance of the motion to strike out.

However, passing the above with a mere suggestion thereof:

(*b*) All allegations, in the passages stricken out, of *impropriety as to disbursements and expenditures* is met by the provision of the act of 1799, ch. 22, sec. 21 (1 Stats., p. 644, top), that "*the said collectors shall at all times pay to the order of the officer who shall be authorized to direct the payment thereof the whole of the monies which they may respectively receive by virtue of this act.*" The allegations upon the point now under consideration are not directed to the competency of the person who commanded the pay-

ment, but to that of the person who received it. Inasmuch as "according to law" (see his bond and the above act of 1799) Barrett was bound to pay the money in his hand to *anybody* who should bring a valid order, it seems immaterial to state or show (see the details mentioned in the answer) that he was, in fact, required *by the United States* (*i. e.*, of course, by orders authorized by them) to pay (1) collectors and (2) surveyors of other collection districts and various other (3) officers of the government, and "for the construction of the (4) new marine hospital and supply of (5) existing hospitals, and (6) light-houses, and (7) of vessels of the revenue and (8) naval service, and for (9) other purposes entirely beyond(?) the scope of his duties as collector." The court will take notice, as matter of express statutory provision, that all such payments under requirements, &c., must have been strictly *official*, and that no payment made at that time by a collector under such requirements, could be *beyond the scope of his duties.*

Indeed, upon this point it seems clear that any payment by a collector, *either authorized or ratified by the United States* (and allowing him credit therefor in his accounts would be a sufficient ratification), is within the scope of his official duties.

Of course the court notices, in passing, that the error alleged by the plaintiff in error *at this point* is *not* that she was not allowed to *falsify* (in the equity sense) items in the account presented by the government (indeed, it was not to her interest so to do, as such items were to her *credit*), but that the addition to the collector's responsibilities, shown by such items, *avoided his bond in toto*, as far as his sureties were concerned.

The reply thereto is that, waiving as immaterial all

question of any addition in Barrett's case merely to the *items* of disbursement recurring in the accounts of his predecessors in office, no question can be made as to the *scope* of such disbursements, *if ordered by the United States*, as the plaintiff in error alleges these to have been. Such scope is, and since 1799 has been, unlimited.

(*c*) I will now consider the question whether the court below erred in striking out so much of the answer as charged that *the United States required or caused Barrett, as collector, to "receive and disburse" large sums of money which, as such, he was not by law required to receive and disburse, as appears by the account filed by the United States.*

Firstly, as to *receipts.* The account filed by the United States shows, as said above, *ten* differently-designated items of receipts.

Inasmuch as *light money* is a tonnage-duty, payable to the collector by the act of 1804, ch. 57, sec. 7 (2 Stats., 300), and *marine-hospital money* is a deduction from seamen's wages, payable to the collector by the act of 1798, ch. 77, sec. 1 (1 Stats., 605), and as all the other items above enumerated (Brief, p. 6), excepting the last, plainly designate moneys received, in one form or other, for duties, or breaches of the law as to duties, it is unnecessary in this connection to consider any item excepting the last, which, however, is a considerable one, designated thus: (folio 63) "*To amount of warrant No. 2646, on Treasurer, dated Aug.* 16, 1845, $56,000."

As already observed in another connection, the record shows that the defense below was not a mere attempt to *falsify* this item, but to show that the *transaction* (of receiving and disbursing it) *avoided the contract* made by his sureties. The answer stricken out admits that

the amount so received was also disbursed, and therefore that it does not enter into the balance charged against the collector. Indeed, if there were no allegation that it had been so disbursed, the theory of the answer in another respect, viz, that *the receipt of itself annulled the bond*, shows that this is no question of more or less, and that, if allowed to stand as part of the issue, the allegation could not have been met on the part of the United States by showing that that identical money appeared also among the items credited. The disbursements of the money could not have cured the vice of its receipt, supposing such receipt to have had the effect of avoiding the bond.

The question, therefore, is, What does the Treasury transcript show as to the item of $56,000, received from the Treasurer of the United States?

If there had been in 1845 a provision of law authorizing the Treasurer to pay money to the collector for purposes connected with the official duties of the latter, it will be presumed that this money was so paid. Now, the act of 1837, ch. 10, sec. 2 (5 Stat. at L., 207), provides "*that, if the revenue from duties, or from the sales of public land, remaining in the hands of the receiving and collecting officers, be not sufficient at any time to pay debentures and other charges which are by existing laws made payable out of the accruing revenue before it is transferred to the credit of the Treasurer, the Secretary of the Treasury is hereby authorized to pay the said debentures and other charges out of any money in the Treasury not otherwise appropriated.*"

Inasmuch as debentures are in the first instance payable by the collector at the port at which the goods were imported, it is plain that the act of 1837, in directing the Treasurer to pay them in case of failure of the fund

primarily liable, allows of his doing this through the collector. Their payment by the collector is a matter appropriate primarily, and the circumstance that in some cases funds therefor must be supplied by the Treasurer does not affect such propriety. It is fit that the Treasurer should administer this duty through the office of the collector.

In each of the quarterly accounts returned by Barrett appear items of large sums paid upon *debentures*, and in that returned to September 30, 1845, that item is $92,776.2.. Presumably, therefore, the $56,000 was paid, so far as "appears by the account filed by the plaintiff," to which the court is referred by the answer, in order to meet a casual deficiency of receipts from duties needed for debentures, these latter requiring the punctuality in payment exacted for bills of exchange (1 Stat. at L., 688, 689). Such presumption is not rebutted by showing that, *during the quarter*, the duties received were in excess of the debentures, or that such advance by the Treasurer was not needed in any other quarter, although in such others large payments were made upon debentures. The presumption that a *particular official transaction is according to the course of office*, is not to be shaken by mere surmises to the contrary. The maxim, Omnia rite acta, &c., as recently expounded in this court (Ross's case, 92 U. S., 281), applies *exactly* in this case, inasmuch as the *existence* of the act appears, and the only question is as to its *character;* the exposition by the court, as above, being, in effect, that the maxim is Omnia *acta, rite* acta, &c.

Such is the light thrown upon this matter by the account filed by the plaintiff, aided by ordinary legal presumptions.

I admit that the question raised in the record must be answered in that light alone. How this question would stand upon the actual transaction as it appears in the books of the Treasury, is not now before the court; but nevertheless it may be seen, in an appendix to this brief, that the *fact* corresponds with the *presumption*, *i. e.*, that the $56,000 was money advanced upon account of debentures.

There is, therefore, upon the whole, nothing in the account filed by the United States showing improper receipts by the collector.

II. It seems to be unnecessary to reply to the point made below in regard to alleged *laches* on the part of the United States in not bringing suit against Barrett and the cosureties.

B.—*As to the three requests made for special instructions to the jury:* Brief, p. 4, and Record, pp. 82, 83.

After what has been said above it seems unnecessary to dwell long upon these matters, which to so great extent are involved in the questions arising upon the motion to strike out.

1. The first request was for an instruction that the fact that the Secretary of the Treasury required Barrett to use the moneys received by him as collector *in the redemption of Treasury notes of the United States*, made a material change in his duties, and, whenever done, discharged the sureties on his bond from all liabilities for his subsequent official conduct: In other words, that the fact that the collector paid out such money to the order of an officer of the United States duly authorized, discharged his sureties!

I may add that the Treasury notes authorized by the Act of 1837, c. 2, were receivable *in payment of all duties* sec. 6 (5 Stat., 202); as were also those authorized by Act of 1842, ch. 287 (5 Stat., 581).

2. The second instruction asked for (p. 83, top) was as to disbursements for any marine hospital, light-houses, and revenue-cutters, viz, That such disbursements were extra-official, and as that to defaults in that respect the sureties were not responsible; and that if said Barrett "was employed by the superior officers of the department to make disbursements for the marine hospital, light-houses, and revenue-cutters," and "was furnished money directly from the Treasury of the United States, or from other sources than the proper receipts and collections of the office of collector, that in order to charge the defendant with the money thus furnished, or such part thereof, it is incumbent on the plaintiff to prove that the money thus furnished, or such part thereof, was necessary to cover the disbursements proper to the office of collector, or was provided for that purpose."

It is enough to say that this "request," as a whole, certainly contains error, and so, no matter how true in part, could not have been given. The payments for *light-houses*, &c., whether previously authorized or merely ratified by his superior officers were not "*extra-official*," but were done *virtute officii*. It is therefore unnecessary to inquire whether any *partial proposition* in the same request is correct. However, in the light of the allegation with which the *request* commences (viz, that disbursements for light-houses, &c., were extra-official), I understand the word "proper," in the latter part of the request, to indicate that regularly no money could be

furnished to the collector as such, *in order to make disbursements for light houses, otherwise than from duties*, &c., I also understand that by word "prove" in the same connection is meant, *prove by other evidence than the Treasury transcript then before the court.*

However, even if by *prove* is meant *prove in any way, whether by the evidence then admitted or by other*, the request seems futile, inasmuch as at that stage of the case *that point had been proved.* The act of 1797, ch. 20, sec. 2 (1 Stat. at L., 512), makes the Treasury transcript *prima facie* proof. Its language is, "the transcript shall be admitted as evidence, and the court trying the case shall be thereupon authorized to grant judgment, and award execution accordingly." The facts in the transcript contained are not merely *presumptively*, but *prima facie* proved. The phrase *authorized to grant judgment*, signifies, by an interpretation quite familiar, that *it shall be the duty of the court to grant judgment*, which is the same as to say that the United States had in such way *proved its case.* The facts alleged in the transcript may be impeached, but the burden of that is on the parties sued, and *until done* the transcript both *warrants and demands* judgment in favor of the United States—*i. e.*, is *proof* of all that it contains. So that, as the plaintiff in error offered no evidence upon this point, it had been proved that the money furnished was furnished for disbursements proper to the office of collector.

3. The third request also is objectionable as assuming that the payments by the collector toward the expenses of the light-house service, &c., were *extra-official;* and also for otherwise taking for granted that in the absence of countervailing proof the transcript did not

per se prove all that was necessary to establish the liability of the party sued, for the balance stated therein to be due.

The reasons which governed the learned court below in administering this case will be found reported in 1 Woods, C. C., 92. I understand that no statutes were passed by the United States during Barrett's term of office to alter the responsibility of collectors; but, as that matter was discussed below by Judge Woods, I again refer to Powell's case, and Singer's case, cited above.

S. F. PHILLIPS,
Solicitor-General.

APPENDIX.

COLLECTOR'S OFFICE,
New Orleans, July 3, 1845.

GENTLEMEN: On the 3d ultimo I addressed a letter to the honorable Secretary of the Treasury on the subject of the large amount of debentures due and payable, owing to the heavy exports of Texas cotton, for drawback, amounting to upward of $100,000 in the course of twenty days; and owing to the small amount paid in at this season of the year, I would be compelled to make an arrangement with the Bank of Louisiana to pay these debentures, which would be redeemed as soon as a sufficient amount was received by me. To this letter I have not as yet received an answer.

I expect in a few days a number of foreign vessels with cargoes, now overdue, when I hope to be able to meet all contingencies. In the mean time, I must request that you will be pleased to continue to pay the debentures that may fall due, as well as any drafts upon this office, for which the check of the collector and naval officer will be given—not to exceed five or six thousand dollars.

With high respect, I have the honor to be,
THOS. BARRETT,
Collector.

To the President and Directors of the Bank of Louisiana.

BANK OF LOUISIANA,
New Orleans, August 7, 1845.

SIR: On the other side I annex a copy of a letter addressed to this bank by the collector of this port.

The request contained therein was complied with, and the bank redeemed debenture certificates, &c., to the amount of about $70,000, in expectation of receiving advices from you authorizing the arrangement.

He has again requested the bank to continue the redemption of certificates to a further amount, which was declined, as we are without advices from you approving of the previous arrangement or authorizing a continuance of it.

It is true there is an amount at your credit sufficient to meet the demands of the collector, but we do not feel authorized to appropriate it in the way required.

The object of the present letter is to ask what arrangement you intend to make with regard to the payment of the debentures, &c., held by the bank, the amount having been reduced to about $56,000 previous to the last application by the collector.

I am, very respectfully, your obedient servant,

R. M. DAVIS,
Cashier.

Hon. R. J. WALKER,
Secretary of the Treasury.

TREASURY DEPARTMENT, *August* 16, 1845.

SIR: Your letter of the 9th [7th?] instant is received, stating that your bank is in advance to the collector of the customs $56,000 for payment of debentures under an

arrangement made with that officer in the absence of sufficient funds in his hands to meet these claims at this season of the year. I approve of your course in this matter, and, should a further sum be required to sustain the credit of debentures duly issued, will thank you to continue the arrangement during the present season.

To replace this advance of your bank, I have directed a warrant to issue in favor of the collector for $56,000. The Treasurer's draft thereon will be placed on one of the depositories in New York, and I have directed it to be inclosed to your care. It will only require the collector's indorsement to balance the advance you have made.

I am, sir, &c.,

R. J. W.,
Secretary of the Treasury.

R. M. DAVIS,
Cashier of Bank of Louisiana, New Orleans.